

If pulled from the Consent the following motion is suggested:

POSSIBLE MOTION

I MOVE TO approve the property lease agreement with Aggregate Construction, Inc. for Lease Site #7, in the Granite Creek Industrial Area under the terms outlined in the agreement.

MEMORANDUM

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

From: Michael Harmon, P.E., Director of Public Works
Dan Tadic, P.E., Municipal Engineer *DT*

cc: Jay Sweeney, Chief Finance & Administrative Officer *J*
Robin Koutchak, Municipal Attorney *RK*
Randy Hughes, Municipal Assessor *RH*

Date: March 30, 2015

Subject: Property Lease, Granite Creek Industrial Area – Aggregate Construction, Inc.

MAGGAN BOSAK MB

MICHAEL MIDDLETON MM

Background:

Aggregate Construction, Inc. (ACI) is a local paving contractor permanently based in Sitka. ACI has held a long term lease for Lease Site #7 in the Granite Creek Industrial Area since at least 1996. This parcel serves as a permanent location for their asphalt plant. The initial term of that lease was 10 years, which was later extended by 5 years in exchange for paving work in lieu of a regular monthly payment. That lease expired in 2011. City Staff and ACI have continued a dialogue since early 2014 to renew the lease agreement. Over the course of the winter, both parties have found common ground on new lease terms again structured on a work in lieu of monthly payment basis.

Analysis:

Water quality in Granite Creek has improved substantially since the road was first fully paved in 2007. Granite Creek has been removed from the impaired water body list in large part due to the paving which reduced a significant amount of sediment and turbidity entering the creek due to the heavy truck traffic. Granite Creek Road sees more heavy truck traffic than just about any road in Sitka given its location adjacent to Sitka's rock quarries. As a result, portions of the pavement are now failing. CBS desires to reconstruct 1,600 linear feet of Granite Creek Road to City standards, with an increased asphalt thickness in critical areas before the pavement fails completely and potentially adversely impacts Granite Creek. Under the proposed terms of the lease, ACI will pave 1,600 linear feet of Granite Creek Road prior to June 15, 2015 in exchange for a 10-year lease term – 3 years in arrears and 7 years moving forward. The proposed lease document is attached.

Fiscal Note:

Lease Site #7 encompasses an approximately 100,700 square foot area in the Granite Creek Industrial Area. The City Assessor established the value of a monthly lease for this parcel at \$2,265.75 or \$27,189 annually. For the proposed 10-year term of this lease, the total value of lease payments would be \$271,890.

Since ACI is currently the only local paving contractor with a plant set up in Sitka, they are uniquely positioned to offer work in lieu of payment for this specific project. Based on recent

bid tabulations on City projects, the total market value of the paving and ancillary work required under this agreement is approximately \$309,000 offering good value to the City.

Recommendation:

Authorize the Municipal Administrator to execute a lease agreement with Aggregate Construction, Inc. for Lease Site #7, under the terms outlined in the attached memo and draft lease agreement.

**AGREEMENT FOR MATERIAL LEASE and/or SALE OF
MUNICIPALLY OWNED PROPERTY
IN EXCHANGE FOR WORK**

City and Borough of Sitka (“CBS”) agrees to lease and/or sell, to Larry Shinn d/b/a/ Aggregate Construction, PO Box 32619, Juneau, Alaska 99803 (“Contractor”), the materials designated in this Agreement for Material Sale and/or Lease of Municipally Owned Property In Exchange for Work (“Agreement”), subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. LEASE AREA: Granite Creek Lease Site #7, CBS Parcel 2-6004-000 and further described as a portion of Lot 1 Alaska State Land Survey 3670 encompassing 100,700 square feet.

B. TERMS:

1. A prior lease of this area with Contractor was entered into in June 1996 and was extended to June 24, 2011 when it expired.
2. This Contractor is over 3 years in arrears on lease payments in “holdover status” which was verbally agreed upon by the parties.
3. This new lease will be seven (7) years, ending June 25, 2021.
4. Incorporated into the agreement will be an arrangement for Contractor to pay back the holdover value in arrears by performing work in kind (see 5 below).
5. In exchange for the seven (7) year lease, Contractor agrees to provide the following service for the past due on the three (3) year arrearage holdover:
 - a. Contractor shall pave that portion of Granite Creek Road from the top of the hill to the quarry road access road (approximately 1,600 linear feet). Contractor shall pay for all costs required by and associated with the road paving in lieu of lease cash payment, including costs associated with any claim of liability, requirement to defend or indemnity of CBS associated with the paving;
 - b. No asphalt shall be placed on Granite Creek Road until the City Engineer or designee has inspected and approved a road bed. Contractor shall notify the City Engineer or designee at least 48 hours prior to asphalt placement to schedule inspection during placement by the City Engineer or designee;
 - c. Asphalt shall be placed a minimum 24 feet wide and 3 to 4 inches thick as indicated on the attached exhibit drawing. Asphalt must be laid in full lane widths and not less than 50 linear feet per placement. Asphalt subgrade and surfacing shall meet City and Borough of Sitka Standard Detail 20-1 unless otherwise noted or approved by the City Engineer or designee. Asphalt specifications and placement shall meet City and Borough of Sitka Standard Specifications Division 40; and

- d. Paving shall be substantially completed by June 15, 2015.
- e. In the event that the work, as described above, is not completed or is not completed to specifications, Contractor shall pay \$2,265.75 for each month of use since June 25, 2011 (expiration of past lease in arrearage) and vacate the property within 30 days.

SECTION II. PERFORMANCE BOND

Contractor shall be required to submit a yearly performance bond in the amount of \$5,000 issued by a Surety licensed to do business in Alaska. At the time each year that the pit cross sections are accomplished and Contractor is inspected for adherence to a reclamation plan, the Municipality shall release the prior year performance bond, in writing and accept a new bond for the next year of operation.

The purpose of said bond shall be to correct nonconforming conditions created by the Contractor. An example might be to do necessary reclamation work left undone or otherwise correct site problems such as drainage control. Said bond may also be used to pay for unpaid royalties or other costs fairly owed to the Municipality.

SECTION III. OPERATING REQUIREMENTS

- A. Boundary Lines and Survey Monuments – Upon execution of this lease, the Lessee 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 Lessee to bear the expense of re-establishing the lines, corners, or monuments by a registered land surveyor.
- B. 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 waste 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 Lessee 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.

- C. 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.

- D. 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 contract area resulting from any and all operations involved under the provisions of this contract. The Lessee shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.
- E. Roads – Before constructing any haul road, secondary or spur roads across Municipal lands, the Lessee 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 Lessee. The Lessee agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to the Municipality.

- F. The Lessee 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 Lessee or a person authorized by him to assume the responsibilities imposed by this contract, shall be present on the contract area.
- G. The terms and conditions of this contract shall apply with equal force upon any agent, employee or contractor designated by the Lessee to perform any or all of the operations of severance, extraction or removal of the materials sold under this contract, and the Lessee shall be liable for non-compliance caused by any such agent, employee or contractor.
- H. The Lessee 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.
- I. Special Provisions – It is mutually agreed that:
 - a. The Lessee shall coordinate his activities insofar as possible with 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, the 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, the Municipality shall be the sole arbitrator to reach a satisfactory result.
 - b. 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 Lessee correct the problems, this contract shall be void upon notification to the Lessee by the Municipality. The Lessee shall hold harmless the Municipality from any litigation whatsoever which may result from this action.

- c. At the expiration of this contract, the Lessee 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 Lessees equipment and any other item felt a responsible element of any final inspection.
- d. All responsibilities and liabilities of the Lessee shall remain in effect until this lease contract file shall be closed. This includes cleanup of site and compliance with all contract items.
- e. The lease area may be used for the processing and storage of materials for operations 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.

- f. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, the Lessees 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.
 - g. If the Lessee is forced to end, restrict or curtail his operations due to State or Federal law or regulations or for any other cause over which the Municipality has no control, the Municipality shall have no liability, whatsoever.
- J. Lessee may not assign its rights under this lease or allow other parties to operate 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 agreement. 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.

- K. There is a grievance board established consisting of all material Lessees in the Granite Creek Quarry and the Municipal Director of Public Works to handle problems arising between Lessees in the area. This board shall attempt to reach agreement among all Lessees. Unsolvable disputes shall be brought before the Administrator and/or to the Assembly for final decision. (See Section IV, 9,a.)
- L. Maintenance of the main road, culverts and other such improvements providing access or available for common use by all Lessees shall be maintained by the Lessees at no expense to the Municipality.

- M. Maintenance of access roads within the lease area as well as ponding and drainage to limit leachates, sediment load and turbidity entering Granite Creek shall be maintained by the Lessee at no expense to the Municipality.
- N. Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and the Lessee 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.
- O. Lessee shall maintain regulatory compliance to include submit/update a Storm Water Pollution Prevention Plan (SWPPP) for all activities on site as required.
- P. The Lessee shall adhere to all State and local regulations regarding the storage and handling of explosives.

SECTION IV. LIABILITY AND INDEMNIFICATION

The Contractor shall indemnify CBS and hold it harmless from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the exercise of privileges granted the Contractor by this Agreement, 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.

SECTION V. INSURANCE

- A. CBS shall be named as an additional insured on Contractor's Comprehensive Liability Insurance Policy.
- B. The Contractor shall carry Workers Compensation Insurance covering all employees and shall also carry \$1,000,000 general liability insurance, naming CBS 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

- A. Any improvements or transportation facilities including crushers, mixing plants, buildings, bridges, roads or any other constructed by the Contractor in connection with this lease and within the lease area, shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the responsibility of the Contractor not CBS. Contractor agrees to follow all applicable safety codes and regulations.
- B. The Contractor shall, within sixty (60) days, after the expiration of termination date of this lease, remove all equipment and other personal property from the lease area.

SECTION VII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the lease area

- B. At all times, when construction or operations are in progress, the Contractor shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of the Contractor, any notices and instructions given by authorized CBS 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

- A. The lease may be terminated by CBS if the Contractor breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon the Contractor.
- B. Failure of the Contractor 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 the Contractor.
- C. This lease may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.

SECTION IX. RESERVATIONS

- A. CBS reserves the right to utilize the site during the term of this lease.
- B. CBS reserves the right to permit other compatible uses, including the sale of materials on the lands near the lease area, provided that CBS determines that such uses will not unduly impair the Contractor's operations under this contract.

SECTION X. PERMITS

- A. Any permits necessary for operations under this Agreement shall be obtained by the Contractor prior to commencing such operations.
- B. All operations shall be in accordance with CBS Conditional Use Permit (attached to lease), as it now exists or modified in the future.

SECTION XI. PASSAGE OF TITLE

All rights, title and interest in or to any material included in this lease 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 sale area by the Contractor within the period of the lease or any extension thereof shall vest in CBS upon completion of the Agreement term.

SECTION XII. 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 CONTRACT.

SECTION XIII. 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.

SECTION XIII. AMENDMENT AND AUTHORITY

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

Larry Shinn d/b/a Aggregate Construction

Print Name: _____
Title: _____

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2015, before me, a Notary Public in and for the State of Alaska, personally appeared _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign the Purchase Agreement and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

CITY AND BOROUGH OF SITKA

Mark Gorman
Municipal Administrator

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

On the ____ day of _____, 2015, before me, a Notary Public in and for the State of Alaska, personally appeared Mark Gorman, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, and by signing this document verifies that he has been authorized to execute this document on its behalf, and he signs freely and voluntarily.

Notary Public for Alaska
My Commission expires: _____



LEASE AREA 7

Approximately 100,700 S.F.



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
LEASE AREA 7**

DRAWN: JJH	SCALE = 100'
CHECKED: D. Tadic	DATE: 12.22.2014
DRAWING NAME: LeaseArea7.dwg	
SHEET NO. 1 / 1	

Memorandum

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

FROM: Randy Hughes, Assessing Director *RH*

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

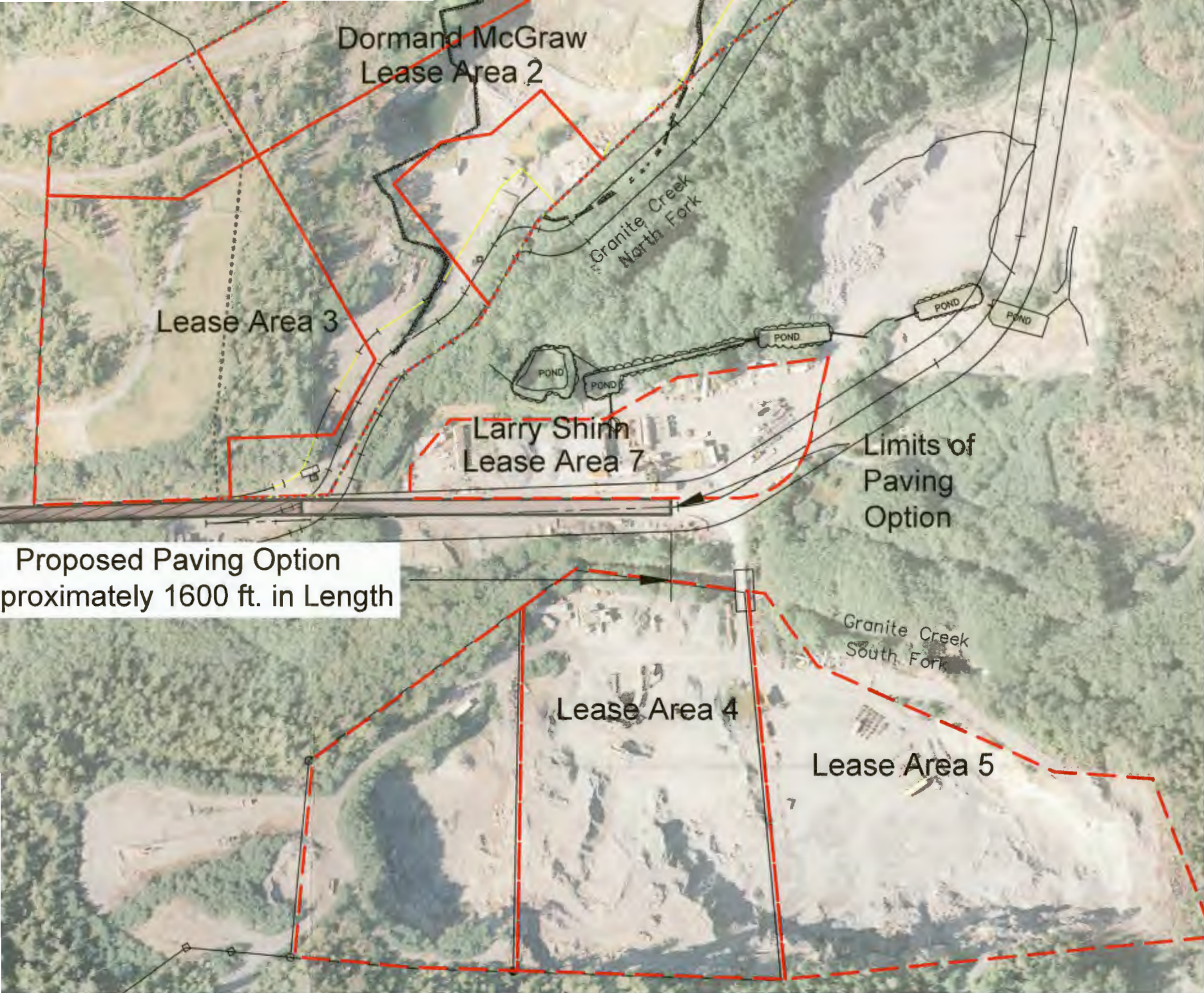
DATE: March 30, 2015

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 lease area proposed is 100,700 square feet, I would assess the land value to be \$302,100 (100,700 square feet X \$3.00 = \$302,100).

The annual rent would be \$27,189 (\$302,100 X .09 = \$27,189).

The monthly rent would be \$2,265.75 (\$27,189 / 12 = \$2,265.75).



1000' 4" Thick



City and Borough of Sitka

Lease Area 7

DRAWN: JJH SCALE: 1" = 200'