

## **E. NEW BUSINESS**

- 5. Ordinance 2022-22: Authorizing a negotiated lease option and subsequent ground lease of certain real property containing 40 acres more or less to Utopian Power for the development of a solar farm facility.**


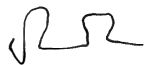

# Kenai Peninsula Borough


## Planning Department – Land Management Division

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### MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor   
Lee Frey, Solid Waste Director <sup>LF</sup>  
Robert Ruffner, Planning Director   
Marcus Mueller, Land Management Officer 

**FROM:** Aaron Hughes, Land Management Agent 

**DATE:** May 26, 2022

**RE:** Ordinance 2022-\_\_\_\_, Authorizing a Negotiated Lease Option and Subsequent Ground Lease of Certain Real Property Containing 40 Acres More or Less to Utopian Power for the Development of a Solar Farm Facility (Mayor)

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Utopian Power (UP) has submitted an application for a negotiated lease/option-to-lease of approximately 40 acres of Borough-owned land located in Sterling. The subject parcel is a decommissioned waste facility, commonly referred to as the Sterling Special Waste Site.

Utopian Power proposes to use the decommissioned facility for the installation of a 2-Megawatt solar generation facility (solar farm). As proposed, the development of the site will occur above ground using concrete form ballasts and/or in a manner approved by the Borough in order to prevent damage to the waste facility liner, existing containment measures and monitoring wells. Entering into a negotiated lease with UP will provide a compatible and productive use for the decommissioned waste site, as well as provide additional security and oversight of the grounds and generate new revenue for the Borough.

The lease terms include a base fixed rental amount for an initial 25-year term, with two 10-years renewals, in addition to a 12% royalty paid to the Borough on all power generated from the facility. A three-year option to lease would be provided for \$3,500/year for project engineering and due diligence prior to entering the lease.

Your consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	6/7/22
Hearing:	6/21/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE OPTION AND  
SUBSEQUENT GROUND LEASE OF CERTAIN REAL PROPERTY CONTAINING 40  
ACRES MORE OR LESS TO UTOPIAN POWER FOR THE DEVELOPMENT OF A  
SOLAR FARM FACILITY.**

**WHEREAS,** the Kenai Peninsula Borough (Borough) has fee title to the parcel described in Section 1 of this ordinance which was acquired from the State of Alaska by patent issued in 1975; and

**WHEREAS,** Utopian Power, LLC (“UP”) has submitted an application for a negotiated lease by way of a lease option for 40 acres of land; and

**WHEREAS,** the subject property, commonly referred to as the “Sterling Special Waste Site”, is classified as “waste handling” and managed as a decommissioned solid waste facility with continued subsurface management responsibilities; and

**WHEREAS,** due to the parcel’s location and favorable attributes resulting from prior use, it has been identified as a desirable site to accommodate a two megawatt solar farm facility; and

**WHEREAS,** the use proposed by UP will be conditioned to not interfere with or damage the existing waste management measures required by the State of Alaska; and

**WHEREAS,** entering into a lease option agreement will provide UP the ability to conduct necessary due diligence and negotiate potential contracts as an independent power producer (“IPP”) for the sale of the electricity generated from the proposed facility prior to entering into a ground lease with the Borough; and

**WHEREAS,** the Borough’s Planning Commission at its regularly scheduled meeting of June 13, 2022, recommended \_\_\_\_\_;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That leasing of the 40 acres, legally described as: Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Third Judicial District, State of Alaska, to Utopian Power, LLC, pursuant to KPB 17.10.100(I) and 17.10.140(B) is in the best interest of the Borough based on the following:

- A. Under the terms of the Lease, the proposed use would be developed in a way that is compatible with the Borough's solid waste program requirements and objectives.
- B. The proposed use will make productive use of idle land, resulting in power generation beneficial to the residents of the Borough and important revenue to the Land Trust Fund.
- C. Active use and additional security measures developed under the Lease will benefit the Borough's site security and potentially reduce nuisance issues at the location.

**SECTION 2.** Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of 17.10.110, Notice of Disposition, based on the following findings of facts:

- 1. Special circumstances or conditions exist.
  - a. The proposed lease is solely with Utopian Power, LLC and for the purpose of operating and maintaining a solar farm site.
- 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
  - a. The property is not being disposed through a sale. The proposed lease is solely with Utopian Power, LLC for the purpose of operating and maintaining a solar farm site. To provide notice to Utopian Power's competitors of an opportunity to lease a site that UP approached the Borough about would be unfair and detrimental to UP and is not a practical manner of complying with the intent of KPB Chapter 17.10.
- 3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
  - a. The solar farm site is compatible with the surrounding land uses.

**SECTION 3.** That the Lease Option shall be for a term of up to three years commencing on the effective date of the Agreement and terminating on the third anniversary of the effective date. A \$3,500 annual fee shall be paid to the Borough for each year the Lease Option is in place. During the Lease Option period UP shall be provided the

exclusive right to use the premises for the purpose of determining feasibility of the proposed solar project, subject to the Borough’s reserved rights to continue to manage for solid waste purposes.

**SECTION 3.** That the Lease Option shall provide that UP may enter a ground lease of the real property described in Section 1 for an initial 25-year term, with two consecutive 10-year renewal periods. A fixed annual base rent payment shall be \$250.00 per acre for a total annual lease amount of \$10,000.00 per year. Additional rental compensation shall be in the form of a 12% royalty payment to be calculated by the annual gross revenue from the sale of power generated from the solar facility.

**SECTION 4.** That the rental and royalty amounts authorized above are negotiated values, established without the use of an independent appraisal, which consider the character of the property, the nature of the use, and the retained rights of the Borough.

**SECTION 5.** The mayor is authorized to sign any documents necessary to effectuate this ordinance.

**SECTION 6.** That UP shall have until 90 days after enactment of this ordinance to execute the Lease Option agreement.

**SECTION 7.** That this ordinance shall be effective immediately upon its enactment.

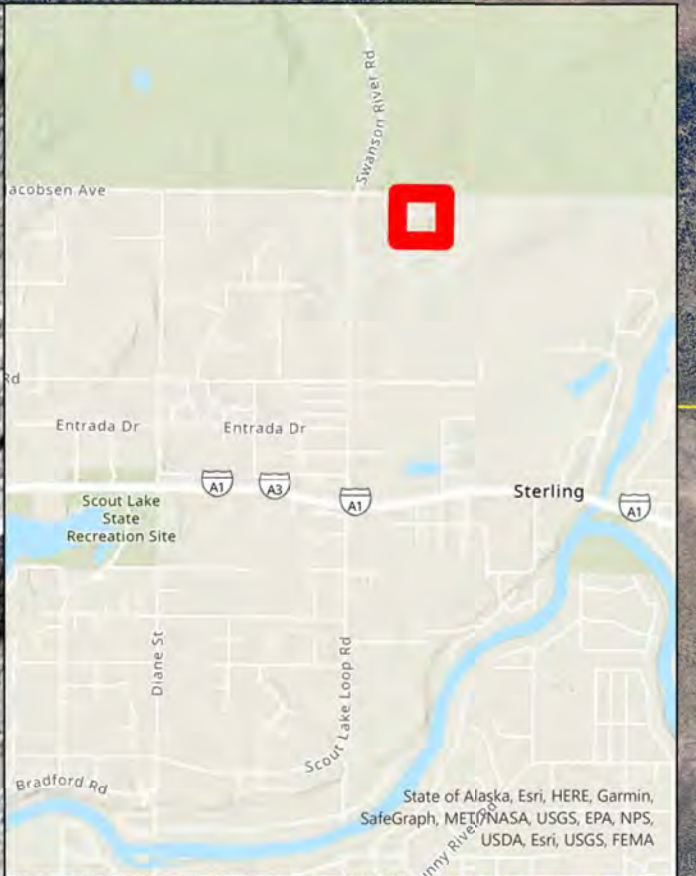
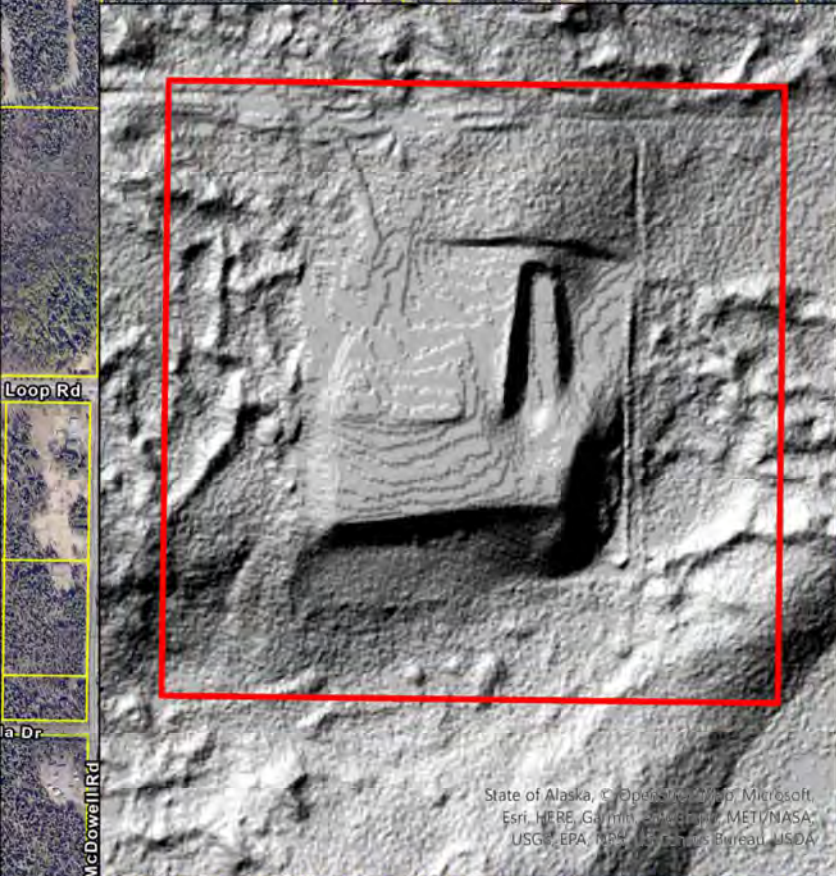
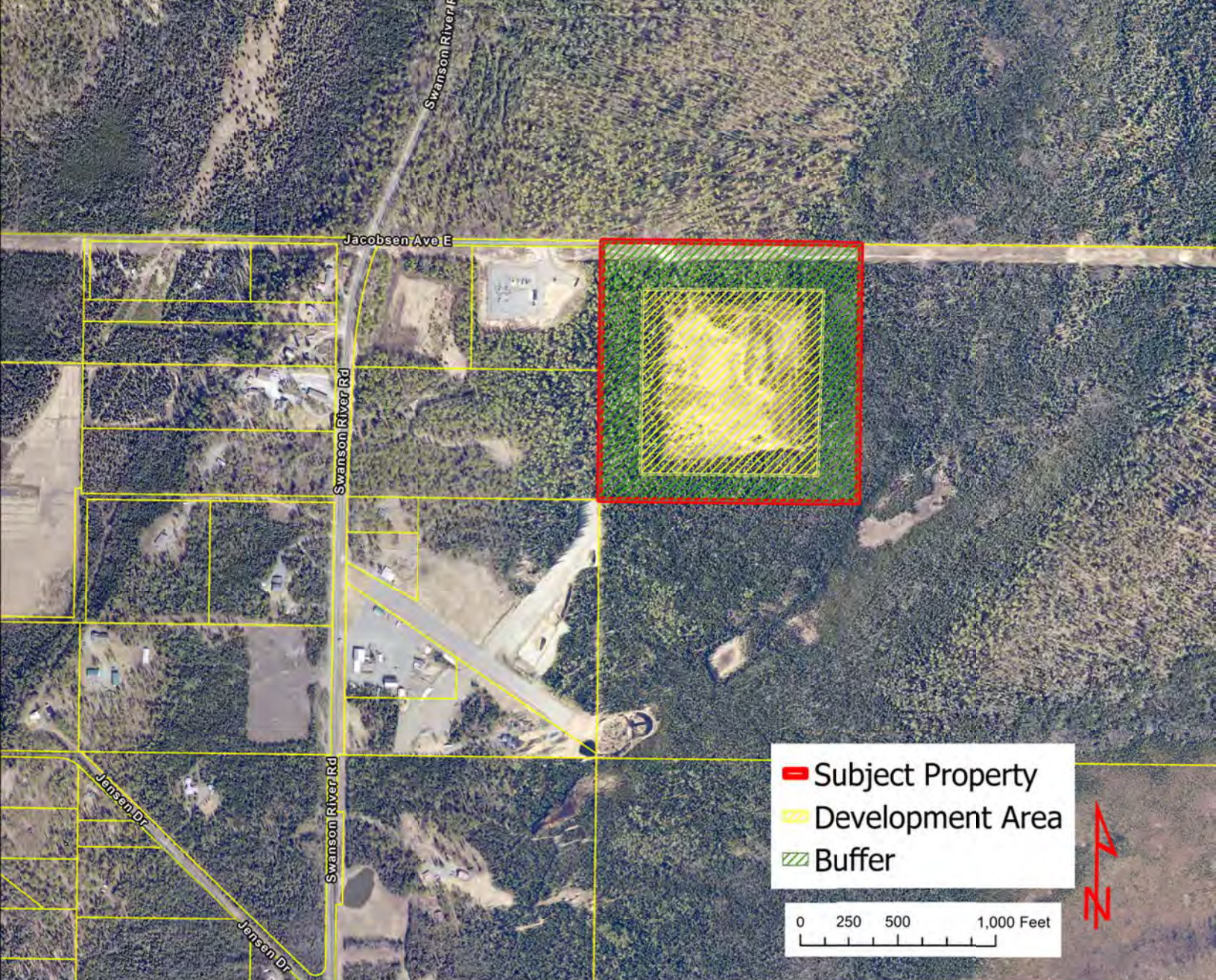
**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

# Utopian Power 2-Megawatt Solar Facility Lease Option and Ground Lease



State of Alaska, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, Swisstopo, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

State of Alaska, Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, USDA, Esri, USGS, FEMA

April 5, 2022

**Utopian Power  
SOLAR ENERGY OPTION AGREEMENT**

THIS SOLAR ENERGY OPTION AGREEMENT (“Agreement”) is dated \_\_\_\_\_, 2022, and is made by and between **the Kenai Peninsula Borough, (“KPB” or “Lessor) an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669** Lessor and **Utopian Power, LLC, (UP or “Lessee) a Michigan Company, whose address is 6036 7 Mile Road, South Lyon, MI 48178 .**

Recitals:

- A. LessorLessor owns that certain real property located in the Kenai Peninsula Borough, State of Alaska, as more particularly described herein.
- B. Lessee desires to obtain an option to lease portions of the Premises (as hereinafter defined) for the development, construction, and operation of Solar Facilities (as hereinafter defined) and other related purposes.
- C. Subject to the terms and provisions of this Agreement, it is the intent of the Parties that Lessee be permitted to conduct certain activities on the Premises or a portion thereof, as specified in this Agreement, and it is further the intent of the Parties such use by Lessee shall not exclude or prevent the conduct by LessorLessor of other lawful activities on the Premises so long as the conduct of such activities does not adversely affect the development, construction and operation of the Solar Facilities or the reasonable exercise by Lessee of its rights set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
  - (a) The term “**Applicable Law**” means each statute, regulation, code, rule, ordinance, judgment, order, writ, injunction, decree, award, or any other directive which is legally binding and has been enacted, issued or promulgated by any governmental authorities having jurisdiction over the Parties or the Premises.
  - (b) The term “**Assignee**” shall mean any purchaser, assignee, sublessee or transferee of all or any portion of Grantee’s rights, title and/or interests in, to and under this Agreement.
  - (c) The term “**Environmental Laws**” means all statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, handling, release, discharge, storage or disposal of Hazardous Materials, including, but not limited to, the Federal Water Pollution Act, as amended (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), and the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.).
  - (d) The term “**Hazardous Materials**” means petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste” or “toxic substances,” or words of similar import, under all Environmental Laws.

(e) The term “**Lease Agreement**” shall mean a lease agreement providing Lessee with all necessary rights to develop, construct, and operate the Solar Facilities and not inconsistent with the terms set out in Exhibit A.

(f) “**Option**” means the exclusive option granted herein by LessorLessor to Lessee to enter into the Lease Agreement.

(g) “**Option Period**” means the period commencing on the Effective Date and ending on the earlier to occur of i) the Effective Date of a lease agreement signed in connection with this Agreement, or ii) the third (3<sup>rd</sup>) anniversary of the Effective Date, unless sooner extended or terminated as provided herein.

(h) The term “**Project**” means the Solar Facilities and those parcels of land upon which Grantee plans to construct the Solar Facilities, together with such adjoining property that is deemed necessary in Grantee’s judgment for the operation of the Solar Facilities.

(i) The term “**Solar Facilities**” means all or any combination of the following: one or more solar photovoltaic gathering devices including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, and monitoring equipment for the conversion of solar energy into electrical energy and the collection, conditioning, storage and transmission of electrical energy (“**SGDs**”), above-ground and/or underground electrical transmission and communication lines and related equipment, footings, towers, poles, crossarms, guy lines, anchors and wires, collection and transmission grids, power conditioning equipment, substations, interconnections and/or switching facilities and transformers (“**Transmission Facilities**”), energy storage facilities (including, without limitation, battery storage facilities), telecommunications equipment, laydown areas, radio relays, roads and gates, signs and fences, meteorological towers, pyranometers and other solar measurement equipment, control buildings, maintenance yards and other related facilities, machinery, equipment and improvements.

**2. Option; Option Payment.**

**2.1** LessorLessor hereby grants the Option to Lessee. Lessee may exercise the Option by delivering a notice in the manner described in Section 12.7 (“**Exercise Notice**”). Upon Lessee’s exercise of the Option in the manner required, LessorLessor and Lessee shall enter into a Lease Agreement with the terms not inconsistent with those set forth in Exhibit A and including all other terms necessary to the development, construction, and operation of the Solar Facilities.

**2.2** The Option Payment shall be made within 60 days of the dates below and in the amounts in U.S. dollars according to the following schedule:

<b>Date</b>	<b>Annual Amount</b>
Effective Date of Agreement	\$3,500.00
First Anniversary	\$3,500.00
Second Anniversary	\$3,500.00

**3. Premises.** LessorLessor owns that certain real property located in the Kenai Peninsula Borough, STATE of Alaska, as more particularly described on the map or plat attached hereto as Exhibit B and the legal description attached hereto as Exhibit B-1 which has been designated as the Premises hereunder. In



the event of a discrepancy between the map and the legal description, the map shall express intent as to control. Lessee may designate a portion of the Premises in the Exercise Notice to serve as the Premises under the Lease.

#### **4. Use of Premises.**

**4.1 During the Option Period.** During the Option Period, Lessee shall have the exclusive right to use the Premises for the purpose of determining the feasibility of Solar Energy conversion on the Premises. The foregoing right to use the Premises during the Option Period includes the right to conduct surveys and environmental, biological, cultural, geotechnical and other tests, including geotechnical drilling and studies, provided the existing solid waste landfill protective liners and monitoring wells are not disturbed or breached.

**4.2 Following the Exercise of the Option.** Upon its exercise of the Option, Lessee shall have the exclusive right to occupy and use the Premises for the purpose of development, construction and operation of a solar-powered electrical generating facility for the conversion of Solar Energy into electrical energy and the collection, conditioning and transmission of electrical energy, whether or not generated on the Premises, together with other related purposes and activities, pursuant to the terms and conditions of the Lease Agreement.

#### **5. Term.**

**5.1 Option Period.** The Option Period shall commence on the Effective Date and end on the third (3<sup>rd</sup>) anniversary of the Effective Date, unless sooner extended or terminated as provided herein.

**5.2 Less's Right to Terminate.** Lessee shall have the right to terminate this Agreement, at any time and from time to time, upon thirty (30) days' prior written notice to the LessorLessor. In such case, no payments due after such termination date shall be due to LessorLessor, and neither party shall have any responsibility or liability to the other hereunder.

**5.3 LessorLessor's Right to Terminate.** LessorLessor shall have the right to terminate this Agreement only upon an Event of Default and as stipulated in Section 11.1(b).

#### **6. Termination of Agreement.**

**6.1 Events Causing Termination.** The occurrence of any of the following events shall terminate this Agreement:

- (a) The expiration of the Option Period of this Agreement without Lessee delivering the Exercise Notice; or
- (b) The written agreement of the Parties to terminate this Agreement; or
- (c) Lessee terminates this Agreement in accordance with Section 5.2; or
- (d) LessorLessor terminates this Agreement in accordance with Section 5.3; or
- (e) Lessee exercises its rights to terminate this Agreement in accordance with the provisions of Section 11.2.

## **7. Repair of Improvements; Damages.**

In the event that the surface of the Premises is damaged (e.g., rutting of land) from activities of Lessee or its agents during the term of this Agreement, Lessee will, at its expense, promptly restore the surface of the Premises to a condition reasonably similar to that which existed immediately prior to the time of damage, provided that Lessee shall have no obligation to repair damage from patent or latent defects and damage caused by Lessor's activities.

## **8. Less's Representations, Warranties and Covenants.**

**8.1 Lessee's Indemnity.** Lessee shall indemnify, defend, protect, and hold Lessor harmless from and against any claims for physical damages to property and for physical injuries to any person, to the extent caused by Lessee or its employees', agents', or contractors' negligence or willful misconduct; provided, however, that Lessee's obligations for damage to crops, tile, fences, and other property or improvements on the Premises or the surface of the Premises during Construction Activities or resulting from other activities of Lessee or its agents during the term of this Agreement shall be governed exclusively by Section 7.

**8.2 Insurance.** Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Lessor. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If Lessee's policies contain higher limits, the Lessor shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Lessor. Certificates of Insurance, acceptable in form and content, will be delivered to the Lessor at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. Lessee shall provide and maintain:

Commercial General Liability (CGL): The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name Lessor as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required. This policy shall name Lessor as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

Worker's Compensation Insurance: For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each person and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

Property Insurance: Insuring against all risks of loss to any UP improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

Automobile Liability: The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name Lessor as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

Full policies. At its option, Lessor may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of Lessor's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

No Representation of Coverage Adequacy. By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, sublessee, and/or contractor or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to Lessor in this Agreement.

Self-insurance. Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

**8.3 Mechanics' Liens.** Lessee shall not permit any mechanics' liens to be filed against the Premises as a result of Lessee's use of the Premises and if any such mechanics' liens are so filed, Lessee shall promptly cause the removal thereof. If Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security as Lessor/Lessor may reasonably request, or remove such lien from the Premises pursuant to applicable law.

**9. No Interference.** Throughout the Option Period, Lessee shall have the exclusive right to measure, evaluate, and convert all of the solar resources of the Premises. Lessor/Lessor shall not interfere with, nor allow any other party to interfere with, the free, unobstructed and natural solar resource over and across the Premises, whether by constructing buildings or other structures or walls, planting trees or engaging in any other activity on the Premises or any adjacent property owned by Lessor/Lessor. Lessor/Lessor shall not conduct any activity, nor grant any rights to any third party, whether on the Premises or elsewhere, that would interfere in any way with Lessee's use of the Premises or the rights granted under this Agreement and Lessor/Lessor shall exercise reasonable care not to disturb or uncover any below ground electrical cables. Lessor/Lessor shall not grant any easement, license, lease or other right for access across any portion of the Premises to any third party in the business of development or operation of solar powered electrical

generation or which would otherwise materially interfere with Lessee's development and acquisition of the Solar Facilities. LessorLessor may use the Premises for those existing agricultural and residential uses that do not interfere with Lessee's use of the Premises and may, without Lessee's consent, enter into agricultural leases; provided that LessorLessor shall not enter into any new leases that would materially impair the exercise by Lessee of its right under this Agreement. LessorLessor will disclose known encumbrances on the Premises on the form that is attached as Exhibit C hereto.

## **10. Assignment; Cure.**

**10.1 Assignees.** Lessee may assign this Agreement in whole or in part at any time upon notice to and with expressed written consent of LessorLessor. Lessee or an assignee that has assigned an interest under this Section will give notice of such assignment (including the address of the assignee thereof for notice purposes) to LessorLessor. Failure to give such notice shall constitute a default under this Agreement.

**10.2 Right to Cure Defaults.** To prevent termination of this Agreement or any partial interest herein, Lessee (or any approved assignee) shall have the right, but not the obligation, at any time prior to the effective date of termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any assignee or grantee hereunder necessary to prevent the termination. If Lessee or an assignee holds an interest in less than all of the Agreement or the Premises any default under this Agreement shall be deemed remedied, as to any such partial interest, and LessorLessor shall not disturb such partial interest, if Lessee or the assignee, as the case may be, cures its pro rata portion of the default by paying the consideration, if any, and performing all other obligations attributable to Lessee or the assignee, as the case may be, holds an interest.

## **11. Default.**

### **11.1 Remedies Upon Lessee's Default.**

(a) **Event of Default.** An Event of Default shall occur only if Lessee shall have failed to perform any of Lessee's covenants under this Agreement (including the payment of consideration or other charges) and such failure continues for a period of thirty (30) days after written notice from LessorLessor (or if such failure is not reasonably capable of being cured within thirty (30) days, if Lessee shall not have commenced to cure the same within such thirty (30) day period and thereafter diligently prosecutes the same to completion).

(b) **Remedies following Events of Default.** Notwithstanding the foregoing, if any Event of Default occurs, and fails to be cured within thirty (30) days after written notice from LessorLessor, LessorLessor may terminate this Agreement upon thirty (30) days prior written notice to Lessee. If Lessee cures the Event of Default prior to the termination date specified in LessorLessor's notice, then this Agreement shall remain in full force and effect.

**11.2 Remedies Upon LessorLessor's Default.** If LessorLessor shall at any time be in default of any of its covenants or representations under this Agreement and such default shall continue for a period of thirty (30) days after written notice to LessorLessor (or if such default (other than a failure of a representation) is not reasonably capable of being cured within thirty (30) days, if LessorLessor shall not have commenced to cure the same within such thirty (30) day period and thereafter diligently prosecute the same to completion), then Lessee shall be entitled to exercise concurrently or successively any one or more of the following rights, in addition to all other remedies provided in this Agreement or available at law or in equity: (a) to bring suit for the collection of any amounts for which LessorLessor may be in default, or for the performance of any other covenant or agreement of LessorLessor, without terminating this Agreement; and/or (b) to offset any or all amounts owed by LessorLessor to Lessee against all amounts

next coming due from Lessee to Lessor; and/or (c) to terminate this Agreement upon thirty (30) days' written notice to Lessor, without waiving Lessee's rights to damages for Lessor's failure to perform its obligations hereunder.

## **12. Miscellaneous.**

**12.1 Exclusivity.** Lessee shall have the exclusive option to acquire the Lease Agreement for the Premises for Solar Energy purposes. Lessor agrees that during the Option Period, Lessor will not initiate, solicit, encourage, or facilitate any inquiries, discussions, proposals, or offers with respect to, or enter into any agreement with respect to, any acquisition or purchase of a solar easement upon, or rights to use the Premises (or any part thereof, or any tract or parcel which includes the Premises) in the development of a Solar Energy production facility with any person other than Lessee.

**12.2 Solar Data.** Any and all solar resource data collected by or on behalf of Lessee either before or after the Effective Date shall at all times be the sole property of Lessee.

**12.3 Damages.** Except as expressly provided herein, neither Party shall be liable to the other for any indirect, incidental, or consequential damages whether based on contract, tort (including negligence), strict liability, or otherwise, resulting from or arising out of this Agreement, including, without limitation, loss of revenue or profits (anticipated or otherwise) or business interruptions, howsoever caused or arising. Nothing in this Section shall limit the amounts payable under any insurance policies maintained by the Parties, nor shall it limit actual damages incurred by any Party.

**12.4 Confidentiality.** Lessor shall maintain in the strictest confidence in accordance with KPBC code, for the sole benefit of grantee, all information pertaining to the terms and conditions of this agreement, including, without limitation, the financial terms of this agreement. Lessee's site design and product design, methods of operation, methods of construction and power production of the solar facilities. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

**12.5 Successors and Assigns.** This Agreement shall burden the Premises and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Lessor and Lessee, and their respective heirs, successors and assigns. Nothing set forth in this Agreement shall be deemed to limit or abridge Lessor's right to sell, transfer, or otherwise convey all or any portion of the Premises; provided that any such transfer shall be wholly subject to Lessee's rights pursuant to this Agreement.

**12.6 Memorandum of Option.** Lessor and Lessee shall execute a memorandum of this Agreement, in the form attached hereto as Exhibit D, and Lessee shall record such memorandum in the Official Records of the Kenai Peninsula Borough in which the Premises are located.

**12.7 Notices.** All notices pursuant to this Agreement shall be in writing and shall be sent only by the following methods: personal delivery; United States Mail (first-class, certified, return-receipt requested, postage prepaid); or delivery by a national, overnight courier service which keeps records of deliveries (such as, by way of example but not limitation, Federal Express, United Parcel Service, and DHL). For purposes of giving notice hereunder, the respective addresses of the parties are, until changed as hereinafter provided, the following:

<p>Lessor:</p> <p>Kenai Peninsula Borough Land Management 144 N. Binkley Street Soldotna, AK 99669</p>	<p>Lessee:</p> <p>Utopian LLC 6036 7 Mile Road South Lyon, MI 48178</p>
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Any Party may change its address at any time by giving written notice of such change to the other Party in the manner provided herein. All notices shall be deemed given on the date of personal delivery or, if mailed by certified mail, on the delivery date or attempted delivery date shown on the return-receipt.

**12.8 Entire Agreement; Amendments.** This Agreement and the attached Exhibits constitute the entire agreement between Lessor and Lessee respecting its subject matter, and replace and supersede any prior agreements. This Agreement shall not be modified or amended except in a writing signed by both Parties or their lawful successors in interest.

**12.9 Attorneys' Fees.** If either Party brings any action or proceeding against the other (including any cross-complaint, counterclaim or third-party claim) to enforce or interpret this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including reasonable attorneys' fees and accountants' fees, which shall be payable whether or not such action or proceeding is prosecuted to judgment. For purposes hereof, the term "prevailing party" includes a party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

**12.10 Partial Invalidity.** Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

**12.11 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alaska in which the Premises are located. Any lawsuit brought arising from this Agreement shall be filed in the courts of the Third Judicial District, State of Alaska, located in the City of Kenai, Alaska.

**12.12 Counterparts.** To facilitate execution, this Agreement may be executed in as many separate counterparts as may be convenient or required. It shall not be necessary that the signature of each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties, hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto, except having attached to it additional signature pages.

**12.13 Approvals.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below and this Agreement shall be effective as of the later of such dates.

**LESSOR:** The Kenai Peninsula Borough

\_\_\_\_\_

Charlie Pierce, Mayor

Date: \_\_\_\_\_

**GRANTEE:** Utopian Power, LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:  
LEGAL SUFFICIENCY:

APPROVED AS TO FORM AND

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage, Deputy Borough Attorney

**LESSOR ACKNOWLEDGEMENT**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022,  
by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on  
behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

**GRANTEE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

On the \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared  
\_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of  
Utopian Power, an \_\_\_\_\_ corporation, the UP named in the attached instrument, and as  
such was authorized to execute this instrument on behalf of the UP.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**  
**MATERIAL LEASE TERMS**

**Ground Lease Term:**

Lease term not to exceed 25-years with two consecutive 10-year renewal periods with consent and approval by both parties.

**Ground Lease Amount:**

During the term(s) of this agreement, UP shall pay a base fixed rent payment of \$250.00 per acre for a total annual lease amount of Ten Thousand Dollars (\$10,000.00). Additional rental compensation shall come in the form of a 12% royalty to be based off the gross revenue generated from the sale of power generated from the facility. Said royalty to be paid on an annual basis, on or before February 15<sup>th</sup> each year.

Additional Terms are as shown or may be incorporated on the attached Lease

**EXHIBIT B**  
**MAP OF THE PREMISES**

**EXHIBIT B-1**  
**LEGAL DESCRIPTION OF PREMISES**

**Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Third Judicial District, State of Alaska**

**EXHIBIT C  
PERMITTED ENCUMBRANCES**

Any Land Subject to CRP Program?  NO  YES

If yes, please state the details:

**Mortgages:**

**Easements:**

**Leases:**

**Other Agreements:**

**EXHIBIT D**  
**MEMORANDUM OF OPTION AGREEMENT**

[make any adjustments as to form as required by recording office]

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(space above reserved for recording information)

**MEMORANDUM OF LEASE OPTION AGREEMENT**

THIS MEMORANDUM OF LEASE OPTION AGREEMENT (“**Memorandum**”) is made and entered into as of \_\_\_\_\_, 2022, by and between **Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (“Lessor”)**, and **Utopian Power, LLC, (UP) a Michigan Company, whose address is 6036 7 Mile Road, South Lyon, MI 48178 (“Lessee”)**.

1. This Memorandum evidences the existence of that certain Solar Energy Option Agreement dated \_\_\_\_\_, 2022 herewith between Lessor and Lessee (the “**Agreement**”) relating to certain real property (the “**Premises**”) located in the Kenai Peninsula Borough, State of \_\_\_\_\_, as more particularly described in **Exhibit A** attached hereto. The Agreement grants to Lessee the right to acquire a lease across portions of the Premises designated by Lessee at the time of its exercise of the option granted therein (the “**Option**”) for the development, construction, and operation of a solar energy generation facility. The purpose of this Memorandum is to notify all persons interested in said real property that Lessor and Lessee have entered into said Lease Option Agreement. The period for the exercise of the option granted under the Agreement is three (3) years, commencing on the date of this Memorandum.
2. This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.
3. To facilitate execution, this Memorandum may be executed in as many separate counterparts as may be convenient or required. It shall not be necessary that the signature of each Party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument.

[Signature Page Follows]

IN WITNESS WHEREOF this Memorandum of Option Agreement has been executed as of the date first written above.

**LESSOR:** The Kenai Peninsula Borough

\_\_\_\_\_

Charlie Pierce, Mayor

Date: \_\_\_\_\_

**GRANTEE:** Utopian Power, LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:  
LEGAL SUFFICIENCY:

APPROVED AS TO FORM AND

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage, Deputy Borough Attorney

**LESSOR ACKNOWLEDGEMENT**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

**GRANTEE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

On the \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of Utopian Power, an \_\_\_\_\_ corporation, the UP named in the attached instrument, and as such was authorized to execute this instrument on behalf of the UP.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**(Memorandum of Option Agreement)**  
**Legal Description**

**Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Third Judicial District, State of Alaska**



## SOLAR GROUND LEASE AGREEMENT

This SOLAR ENERGY GROUND LEASE AGREEMENT (“Agreement”) is entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter “KPB” or “Lessor”), and Utopian Power, LLC, (UP) a Michigan Company, whose address is 6036 7 Mile Road, South Lyon, MI 48178 (hereinafter “UP” or “Lessee”). The Effective Date of this Agreement shall be the date the KPB executes the Agreement.

### PART I. BACKGROUND

1. **Purpose.** The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant UP the right to use a portion of the Property in accordance with the terms of this Agreement.

2. **Authorized Contact.** All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the person listed below is at the party’s own risk.

**KPB**

Name: Kenai Peninsula Borough  
Attn: Land Management Division  
Mailing Address: 144 N. Binkley St.  
Soldotna, AK 99669

**LESSEE**

Utopian Power, LLC  
6036 7 Mile Road  
South Lyon, MI 48178

3. **Contract Documents.** As authorized by KPB Ordinance 2022-\_\_\_\_\_, this Agreement is the final and complete understanding of the Parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

- Appendix A: Lease Provisions Required by KPB 17.10
- Exhibit 1: Utopian Power Solar Energy Lease Option Agreement
- Exhibit 2: Description of the “Property” and the “Leased Premises”
- Exhibit 3: Leased Premises site sketch or maps
- Exhibit 4: Memorandum of Lease

**If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.**

#### 4. Definitions.

4.1. The term “Leased Premises” means the area within the Property that may be used by UP for the uses, purposes and upon the terms and conditions of this Agreement as more particularly described and shown on Exhibit 1 and Exhibit 2.

4.2. The term “Property” means the real property owned by the Kenai Peninsula Borough that is subject to this Agreement wherein a portion of the real property a solar energy farm is to be located, is leased to UP pursuant to the terms of this Agreement.

4.3. The term “Site” refers to the individual area set out in Section 5.1 used to construct and install the solar Facilities.

4.4. The terms “Solar Farm” includes erecting, installing, operating and maintaining solar generating power equipment, related structures and improvements necessary to the operation of a 2-Megawatt facility;

### **PART II. PROPERTY DESCRIPTION; USE; RENT**

#### 5. Description of Property.

5.1. Subject to the terms and conditions of this Agreement, KPB hereby leases to UP the following generally described property and/or space:

a) The surface use of that entire property referred to as the Sterling Special Waste Site containing approximately 40 acres comprised of a solar production and production area buffer, including the air space above such ground space as described and depicted on Exhibit 1 and legally described as follows:

**Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska**

5.2. The solar production and solar production buffer area descriptions within the leased premises may be adjusted by mutual written agreement of the parties, subject to the condition that the adjusted description may not conflict with or impact any prior mitigation efforts.

#### 6. Allowed Use.

6.1. The Leased Premises is being leased for the purpose of erecting, installing, operating and maintaining a Solar Farm for the purpose of generating electricity to be sold to third parties. UP may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by UP as defined in the development plan for the permitted use herein. UP will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with UP’s use of the Solar Production Area of the Leased Premises for the intended purposes. UP will have the exclusive right to install and operate, or contract for the installation, operation and maintenance, upon the Leased Premises a Solar Farm facility, which may include solar arrays, support structures, above and below ground conduit, towers, communication equipment, batteries, buildings, equipment, weather antennas, fencing, improved

roads and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary. Any and all allowed uses are conditioned upon, 1. KPB review and approval of Lessee's development plan; 2, No damage to the existing landfill liners and or monitoring wells; 3, KPB retaining access as may be deemed necessary for solid waste site management.

## 7. Rent.

7.1. During the term(s) of this Agreement, UP shall pay a base annual rent payment of \$250.00 per acre for a total annual lease amount of Ten Thousand Dollars (\$10,000.00). Additional rental compensation shall come in the form of a 12% royalty to be based on the gross revenue from the sale of power generated from the Solar Farm each calendar year. Said royalty to be paid on an annual basis, on or before February 15. The gross revenue generated shall be determined by review of annual reporting submitted by UP providing an annual summary along with supporting documentation of total kilowatt hours of energy generated, rate of sale for said energy and a copy of all respective IRS-1099 documentation.

## 8. Term.

8.1. The initial term will be twenty-five (25) years (the "Initial Term"), commencing on the Effective Date.

8.2. UP will have the option to extend the term of this Agreement for two (2) successive terms of ten (10) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless UP delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of UP's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

8.3. Should UP or any assignee, sublessee or licensee of UP hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

## PART III. TERMINATION; SECURITY; ACCESS; REMOVAL

9. **Termination; Cancellation.** This Agreement may be terminated or cancelled, without penalty or further liability, as follows:

9.1. By UP within 180 days of executing this Agreement, upon written notice to KPB, if UP is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the aforementioned Solar Farm; or if UP in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

9.2. By KPB, upon written notice to UP, if UP is in breach of any term of this Agreement and fails to cure the breach within 60 days of the date a notice of breach is sent to UP, or 30 days if the breach is due to damage to critical solid waste infrastructure or obstruction to the repair or management thereof.

9.3. By KPB, upon written notice to UP, if by five (5) years from the commencement date, a Solar Farm Facility is not constructed, installed, and operational within the Leased Premises as contemplated under Section 6.

**10. Taxes.** UP shall pay any property taxes assessed on, or any portion of such taxes attributable to, the Solar Farm Facilities located on the Leased Premises, including private leasehold or possessory interest taxes as may be assessed by a taxing authority.

**11. Fence & Site Security.** Notwithstanding Section 4 above, UP will install a locked, galvanized chain link fence at least eight feet (8') in height around the perimeter of the Leased Premises to protect against unauthorized access. UP may also elect, at its expense, to construct such other enclosures and/or fences as UP reasonably determines to be necessary to secure its improvements situated upon the Leased Premises. UP may also undertake any other appropriate means to restrict access to the Leased Premises, including, without limitation, posting signs for security purposes. In addition to the above-referenced security measures, UP agrees, at its sole expense and as a condition of the lease, to develop and extend Jacobsen Avenue East to the easterly lot boundary of the leased parcel.

**12. Access, Maintenance, and Utilities.**

12.1. **Access.** During the Term, UP and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPB agrees to cooperate with UP's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, UP may utilize such utilities and services. Upon UP's request, KPB will execute and deliver to UP requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of UP's request.

12.2. **Maintenance.** UP will keep and maintain the Leased Premises in good condition.

12.3. **Utilities.** UP is solely responsible for installing meters for utility use and payment, as applicable, and shall not connect to any KPB-owned electrical, communication, or other utility without KPB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

**13. Equipment, Fixtures and Removal.** The Solar Farm Facility will at all times be the personal property of UP and/or its sublessees and licensees, as applicable. UP or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as UP may deem necessary or appropriate. Such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, with the specific exclusion of the exterior security fence, will not be deemed to be part of the Leased Premises, but will remain the property of UP or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the leased premises for a period of six (6) consecutive months following construction of the tower (the "Removal Period"), UP must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, and erosion concerns, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation

materials, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine, without any obligation on the part of KPB to account to UP for any proceeds therefrom. Time is of the essence.

#### **PART IV. ASSIGNMENT; KPB COLLOCATION; WARRANTIES**

**14. Assignment.** UP may assign this Agreement to any person or entity, at any time with prior written consent of KPB's Mayor which will not be unreasonably withheld or delayed so long as the assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, UP may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with UP, or (b) in connection with the sale or other transfer of substantially all of UP's assets in the market area where the Leased Premises is located.

#### **15. Rights Reserved by KPB.**

15.1. KPB reserves the right to install communication equipment on leased premises, provided however that the installation of such equipment in no way obstructs UP's use and productivity of the leased premises. KPB reserves the right to lease to a third party a communication site up to 60'X60' along with reasonable and prudent access within the buffer area at which time said area shall be removed from the lease. Rental adjustments shall also be made to the base rental fees to account for the area removed on a prorated basis.

15.2. KPB reserves the right to enter and conduct required subsurface testing of the leased premises as may be required by local, state or federal regulatory agencies. The primary management obligation of the leased premises shall continue to be for the regulatory compliance of the prior solid waste facility. In the event a conflict exists between the proposed use of UP and the management obligations of KPB, the reserved rights of KPB required for the continued management of the site shall be considered the priority use of the leased premises.

15.3. KPB expressly reserves all subsurface interests in and to the leased premises. No subsurface activities, including excavation, shall be allowed on the leased premises without the written approval of KPB.

#### **16. Covenants, Warranties and Representations.**

16.1. KPB represents and warrants that KPB is the owner in fee simple of the Property, free and clear of all liens and encumbrances except those which may have been disclosed to UP in writing prior to the execution hereof, and that KPB alone has full right to lease the Leased Premises for the Term.

16.2. KPB hereby represents the prior use of the leased premises as a decommissioned solid waste facility. Continued management obligations exist wherein KPB may be required to take future management actions as necessary to satisfy regulatory compliance of the site.

16.3. KPB will not do or knowingly permit anything during the leased term not related to KPB's ongoing management obligations related to the solid waste facility located on the leased premises that will unreasonably interfere with or negate UP's quiet enjoyment and surface use of the Leased Premises, or cause UP's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws provided, however, UP's use does not conflict with continued management obligations of KPB. In such case any management obligations of KPB shall be considered a priority use of the site. KPB will cooperate with UP in any effort by UP to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPB agrees, in its capacity as landowner, to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for UP to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

16.4. Subject to Section 12 above, UP will have access to all utilities required for the operation of UP's improvements on the Leased Premises that are existing on the Property.

16.5. KPB has not granted any third-party licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to UP in writing prior to the execution hereof.

16.6. Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

#### **17. Waivers.**

17.1. KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Solar Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against UP for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by UP.

17.2. EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

### **PART V. INSURANCE; INDEMNIFICATION; MISCELLANEOUS TERMS**

18. **INSURANCE.** Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If UP's policies contain higher limits, the KPB shall be entitled

to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. UP shall provide and maintain:

18.1. Commercial General Liability (CGL): The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad-form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

18.2. Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate, UP may use any combination of primary and excess insurance to meet the total limits required. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

18.3. Worker's Compensation Insurance: For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each person and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

18.4. Property Insurance: Insuring against all risks of loss to any UP improvements at full replacement cost with no insurance penalty provision. UP shall have the right to self-insure such Property Insurance.

18.5. Automobile Liability: The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

18.6. Full policies. At its option, the KPB may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the KPB's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

18.7. No Representation of Coverage Adequacy. By requiring insurance herein, the KPB does not represent that coverage and limits will necessarily be adequate to protect UP, sublessee, and/or contractor(s) or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the contractor(s) and subcontractor(s) of any tier under the indemnities granted to the KPB in this Agreement.

18.8. Self-insurance. Notwithstanding the foregoing, UP may self-insure any required coverage under the same terms as required by this Agreement.

**19. Waiver of Subrogation.** To the extent allowed by law, UP hereby grants to the KPB a waiver of any right of subrogation which any insurer of said UP may acquire against the KPB by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the KPB has received a waiver of subrogation endorsement from the insurer. It is the Lessors sole and strict responsibility to notify its insurer of this obligation and obtain a waiver of subrogation endorsement from the insurer, if required.

**20. Lessee Liabilities.** In addition to other liabilities under this Agreement, UP has the following liabilities and agrees:

20.1. UP assumes all risk of loss, damage or destruction to UP's improvements on the Leased Premises.

20.2. UP will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, permitting, construction, operation and maintenance of any facility, improvement and/or equipment on the Leased Premises.

20.3. The KPB has no duty, either before or during the Lease Term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

20.4. The UP has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement, specifically to include existing and future containment and monitoring infrastructure of the solid waste facility.

## **21. Indemnification.**

21.1 UP agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by UP. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of UP arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify UP in a timely manner of the need for indemnification but such notice is not a condition precedent to UP's obligation and may be waived where UP has actual notice. This Agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against the KPB relating to UP's use and occupancy of the Leased Premises or the



Property. Notwithstanding the foregoing, UP's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

**22. Inspection.** The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, the KPB shall provide UP with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. UP reserves the right to have a representative present at all times during KPB's inspection.

**23. Force Majeure.** The time for performance by KPB or UP of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or UP, as the case may be.

**24. Default.** The failure of UP or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

#### **25. Lessee Mortgages.**

25.1. KPB consents to the granting by UP of a lien and security interest (each, a "UP Mortgage") in UP's interest in this Agreement and all of UP's personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "Lender") only to the extent and amount necessary to maintain improvements on the Leased Premises. The UP may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as UP hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB's rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the UP's interest in the Leased Premises. It is a material breach of this Agreement for UP to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

25.2. KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of UP under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

#### **26. Miscellaneous.**

26.1. *Survival.* If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

26.2. *Non-waiver.* Failure of Party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a Party's rights hereunder, will not waive such rights.

26.3. *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

26.4. *Bind and Benefit.* This Agreement is binding upon and will inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

26.5. *Memorandum.* A short-form Memorandum of Lease may be recorded at KPB or UP's option in the form as depicted in Exhibit 3, attached hereto. The KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of UP.

26.6. *W-9.* As a condition precedent to payment, the KPB agrees to provide the UP with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

26.7. *Counterparts.* This Agreement may be executed in counterpart, and may be executed by electronic signature in compliance with AS 09.43 and 15 USC 7002, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

26.8. *Entire Agreement.* This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

**PART VI. EXECUTION**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

**LESSOR:** The Kenai Peninsula Borough

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE:** Utopian Power, LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage, Deputy Borough Attorney

**LESSOR ACKNOWLEDGEMENT**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

**LESSEE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

On the \_\_\_\_ day of \_\_\_\_\_, 202\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of Utopian Power, an \_\_\_\_\_ corporation, the UP named in the attached instrument, and as such was authorized to execute this instrument on behalf of the UP.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

UTOPIAN POWER GROUND LEASE AGREEMENT

Site Name: Sterling Site

**EXHIBIT 1**

**DESCRIPTION OF PROPERTY AND PREMISES**

Page 1 of 1

The Property is legally described as follows:

**Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Third Judicial District, State of Alaska**

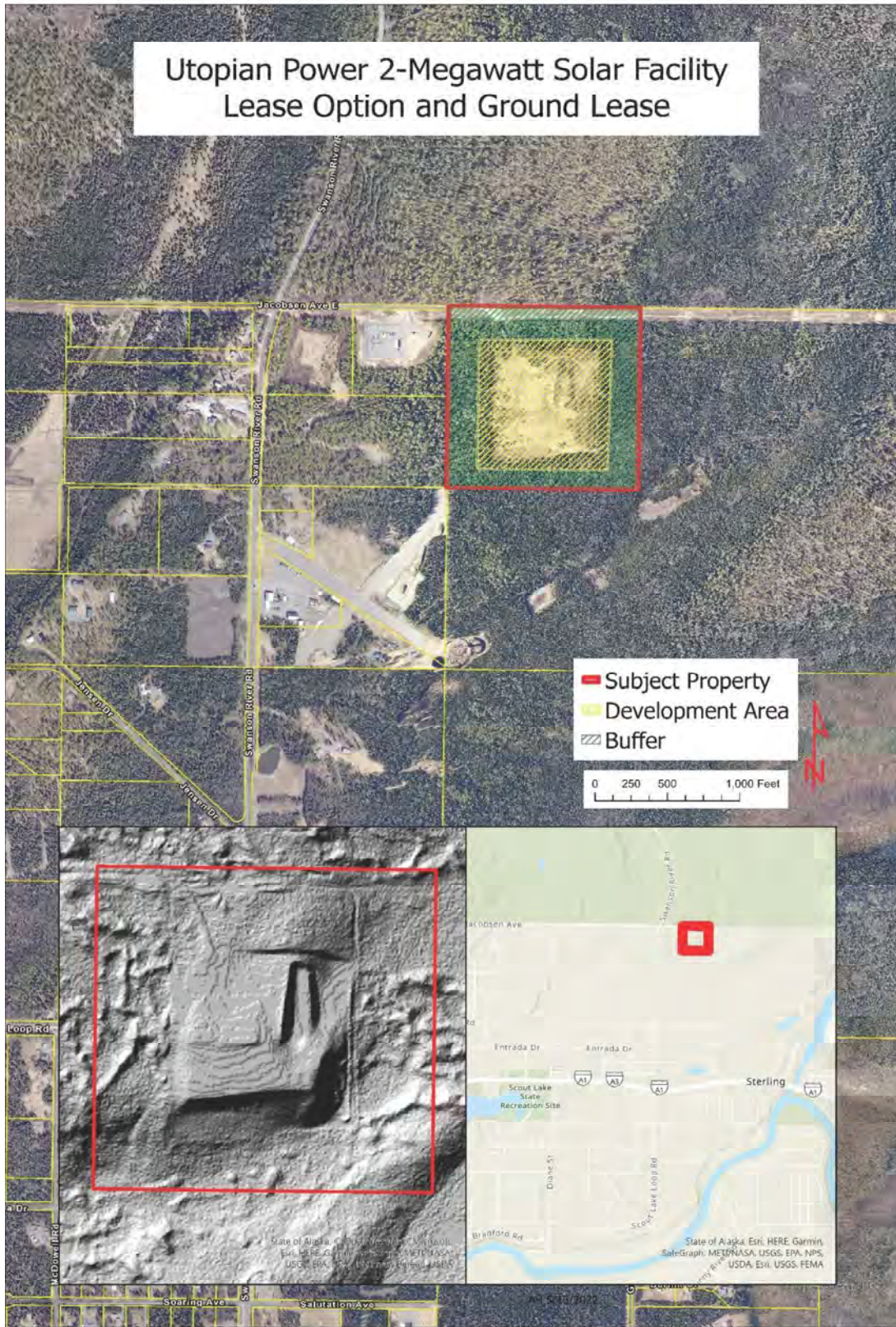
DRAFT

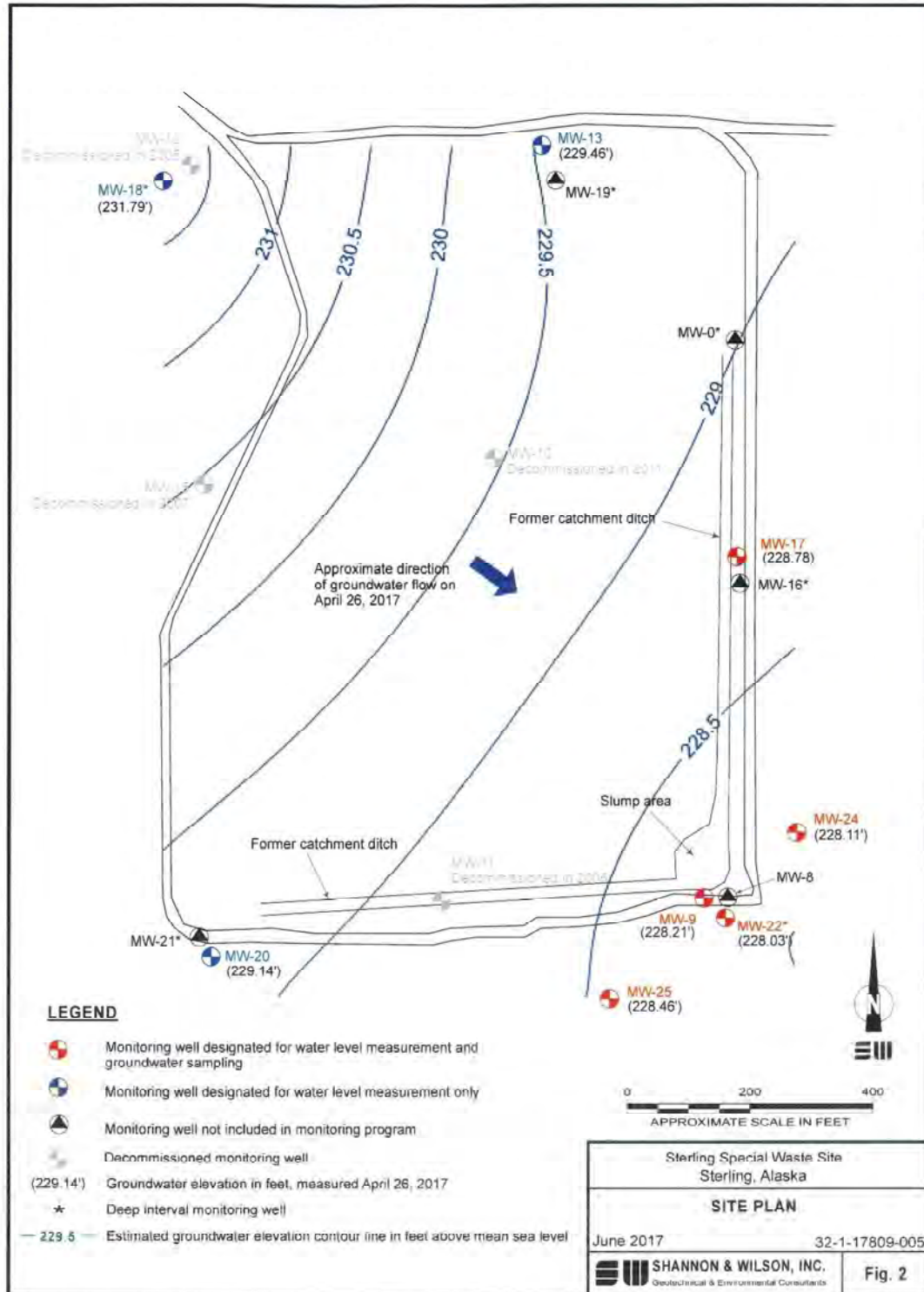
**EXHIBIT 2**

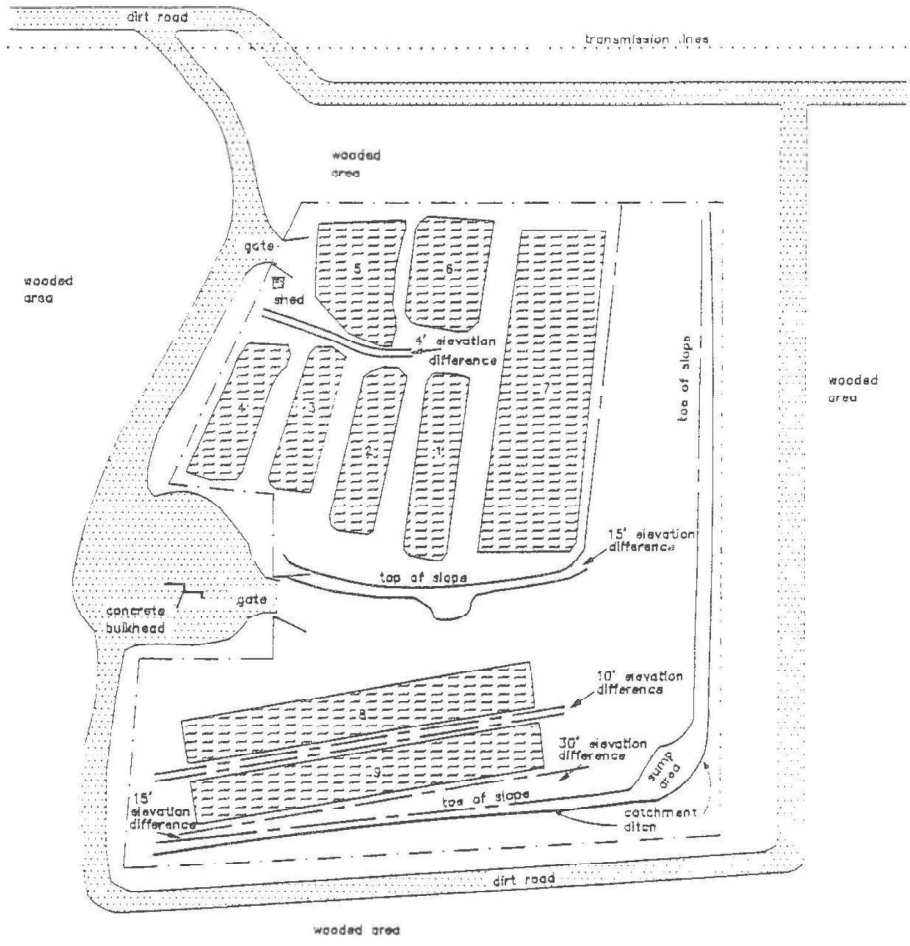
Leased Premises

(Attached)

INSERT SITE SURVEY DIAGRAM / SITE SKETCH / MAPS







**LEGEND**  
 Pond  
 Fence  
 Elevation contour

0 25 50 100 150 200  
 approximate scale in feet



ecology & environment, inc.  
 Job: R10-8506-02 Waste Site: AK0003  
 Drawn by: Den Pippenger Date: 7/7/86

**FIGURE 3.3**  
 SITE MAP  
 STERLING SPECIAL WASTE SITE  
 Sterling, AK



## APPENDIX A – SITE PLAN



**Date:** March 31, 2022  
**To:** Kenai Peninsula Borough Assembly  
**From:** Forrest Cohn, Utopian Power  
**Subject:** Development Overview, Borough Land Lease

---

Hello Assembly,

This memorandum is to summarize the development plan for parcel 06304908 which is owned by the Kenai Peninsula Borough.

Our intention would be to develop this parcel into a solar photovoltaic generator with a capacity of 2MWac. This is an ideal site for solar generation due to it's status as a historic landfill site. In addition to the limited potential use for this site for other purposes the site has ideal sunexposure with very little existing shading.

We are in discussions with Homer Electric Association to enter into a formal study on interconnecting this system into an existing substation which is directly next to this parcel.

This system would bring economic benefits to the area as well as create reliable, cheap, and environmentally responsible power generation to the Kenai Peninsula. This system is a win-win solution for the site for the entire Peninsula.

Please see additional information below.

1. Nature of Improvements:

- a. The site improvements would include concrete ballasted solar arrays. In order to avoid interaction with the unknown underground conditions of the landfill our intent would be to utilize concrete ballasts to mount solar arrays.
- b. From the solar arrays the panels would be wired to inverters creating AC power.
- c. Interconnection with HEA to create a clean energy generator not reliant on fossil fuels.

2. Estimated Value of Improvements:

- a. The total capital expenditure expected for the project would be roughly \$4,000,000.

3. Development and Construction timetable:

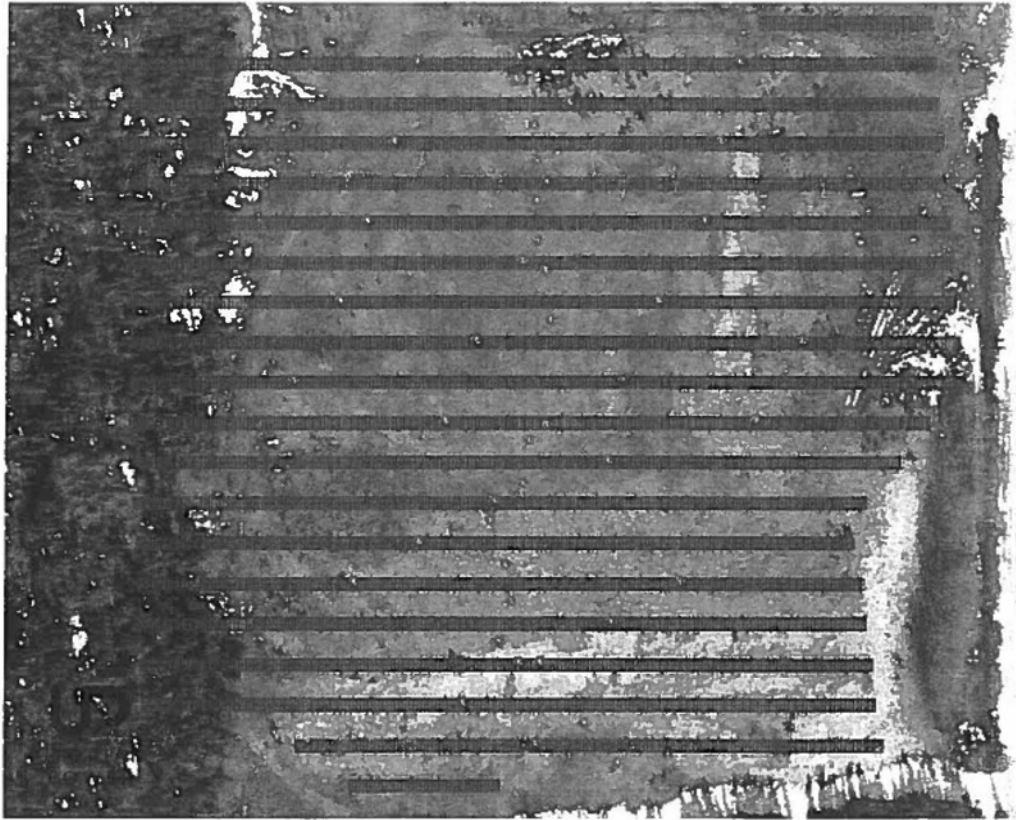
- a. The total construction timeline will be approximately 1 year from notice of approval. Our approval will be in the form of an agreement with HEA. At this time there are numerous



steps to complete between now and then. We request a 3 year window to achieve approval.

4. Schematic

- a. Generally speaking we will utilize the entire parcel to mount solar modules. Depending on exact layout agreed upon with the Borough the layout would look similar to the following.





We appreciate the opportunity to present this site proposal to the Borough. If any additional information is requested please do not hesitate to reach out directly.

Thank you

*Forrest Cohn* *4/6/2022*

Best Regards,

**Forrest Cohn**  
President  
Utopian Power  
(907) 420-7480  
fcohn@utopianpower.com

*lets make this a win win  
for all parties.*

## MEMORANDUM OF LEASE

**MEMORANDUM OF SOLAR GROUND LEASE AGREEMENT**

This Memorandum of Real Property Lease is made and entered into this \_\_ day of \_\_\_\_\_, 202\_ by and between the **Kenai Peninsula Borough, an Alaska municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669** (hereinafter the "KPB" or "Lessor"), and **Utopian Power, LLC, (UP) a Michigan Company, whose address is 6036 7 Mile Road, South Lyon, MI 48178** (hereinafter "UP" or "Lessee").

Pursuant to the terms of that certain Solar Ground Lease Agreement (hereinafter called "Agreement") by and between Kenai Peninsula Borough (KPB) and Utopian Power (UP), dated \_\_\_\_\_, and for the consideration therein stated, Parties have hereby agreed to a Solar Ground Lease Agreement of certain real property and authorized rights located on the real property disclosed as follows:

**Government Lot 3 of Section 1, Township 5 North, Range 9 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska**

The term of the Agreement as provided therein is for 25 years, commencing \_\_\_\_\_, and Lessee has the option to extend the term of the Lease for an additional 2 consecutive 10-year renewal periods, according to the terms and conditions thereof.

All of the terms, conditions, warranties, covenants, and agreements pertaining to the rights granted and as set forth in the executed Agreement are unchanged hereby and incorporated herein by this reference. True and correct copies of the Agreement has been retained by all parties to be used for any legal purpose, including but not limited to disclosure to purchasers or lenders entitled to a security interest in the Agreement or any portion thereof or any person having a lawful right to know the content and details thereof.

IN WITNESS WHEREOF, the Parties to the Agreement have executed this instrument as of the date first above written.

KENAI PENINSULA BOROUGH

Utopian Power, LLC

\_\_\_\_\_, Mayor

\_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage, Deputy Borough Attorney

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 202\_, by \_\_\_\_\_, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss:  
THIRD JUDICIAL DISTRICT        )

On the \_\_\_\_ day of \_\_\_\_\_, 202\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of Utopian Power, an \_\_\_\_\_ corporation, the UP named in the attached instrument, and as such was authorized to execute this instrument on behalf of the UP.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Return to:  
KPB Land Management Division  
144 North Binkley Street  
Soldotna, AK 99669