

Introduced by: Mayor  
Date: 04/06/21  
Hearing: 04/20/21  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-13**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE OF TRACT C QUARTZ CREEK SUBDIVISION WITH KIEWIT INFRASTRUCTURE WEST COMPANY FOR PROJECT STAGING ACTIVITIES IN SUPPORT OF THE STERLING HIGHWAY MP 45-60 CONSTRUCTION PROJECT NEAR COOPER LANDING**

**WHEREAS**, the Alaska Department of Transportation & Public Facilities (“DOT&PF” is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing; and

**WHEREAS**, the borough owns Tract C Quartz Creek Subdivision (Tract C) at the east end of the project; and

**WHEREAS**, Kiewit Infrastructure West Company (KIWC) is a Construction Manager/General Contractor for DOT&PF on the Sterling Highway MP45-60 project; and

**WHEREAS**, KIWC has identified Tract C as being a practical and important location for project staging activities; and

**WHEREAS**, Tract C is classified as Commercial, and development of the parcel for project staging is compatible with the commercial land classification; and

**WHEREAS**, land management has worked with project officials to develop an agreement involving borough lands and resources based on project needs; and

**WHEREAS**, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of April 12, 2021 recommended approval by unanimous consent;

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

**SECTION 1.** That the assembly finds that leasing Kenai Peninsula Borough owned Tract C Quartz Creek Subdivision pursuant to KPB 17.10.100(I) is in the best interest of the borough.

**SECTION 2.** That the provisions of KPB 17.10.080-090 and KPB 17.10.110-240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this lease to Kiewit Infrastructure West in cooperation with the Sterling Highway MP 45-60 project.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease Tract C Quartz Creek Subdivision, Plat No 94-11 Seward Recording District, according to the terms and conditions and substantially in the form of the Land Lease and Development Agreement accompanying this ordinance. The authorization is for lease solely to Kiewit Infrastructure West Company (KIWC), and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

**SECTION 4.** The mayor is authorized to execute a lease substantially similar to the Lease Agreement form approved by the assembly.

**SECTION 5.** KIWC shall have 90 days from the time of enactment of this ordinance to execute the lease document.

**SECTION 6.** That revenue from the subject lease shall be deposited in the Land Trust Fund.


**SECTION 7.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL, 2021.**

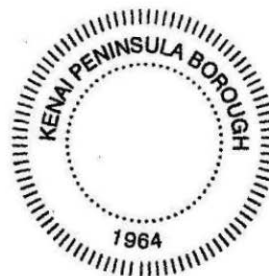


\_\_\_\_\_  
Brent Hibbert, Assembly President

ATTEST:



\_\_\_\_\_  
Jonni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert  
No: None  
Absent: None

## Land Lease and Development Agreement

KPBL# 21-0501-02

The Kenai Peninsula Borough (KPB), an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter “KPB” or “Lessor”) and Kiewit Infrastructure West Co. (KIWC), whose address is 2000 W. International Airport Rd. C-6 (hereinafter “KIWC” or “Lessee”) enter into this Land Lease Development Agreement and agree as follows:

### **I. Background; Contract Documents; Authorized Contact; Definitions**

1. **Background.** The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described as Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District (the “Property”). The parties intend that for good and valuable consideration KPB grants KIWC the right to develop and use the Property for the purposes of Sterling Highway MP45-60 project operations including staging and housing equipment, personnel or resources, and processing construction materials in accordance with the terms and conditions of this Agreement and all attachments hereto. KIWC agrees that it will conduct its use and operations according to the terms and conditions contained in This Agreement for purposes integral to the Alaska Department of Transportation & Public Facilities’ (“DOT&PFs”) Sterling Highway MP45-60 Project near Cooper Landing, Alaska.
2. **Authorized Contact.** All communications about This Agreement shall be directed as follows. Any reliance on a communication with a person other than those listed below is at the party’s own risk. KPB staff do not have authority to bind the KPB. Any material amendments or changes to The Agreement must be approved by the KPB Assembly by ordinance.

#### **KPB**

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

#### **KIWC**

Name:  
Attn:

3. **Contract Documents.** As authorized by the Borough Assembly, this Lease and Development Agreement, and incorporated contract agreements, together form the entire agreement (“Agreement”). Collectively, the Agreement is the final and complete agreement and understanding of the parties. The following agreements or attachments, are attached to, incorporated herein by reference, and together form the Agreement:
  - i. Lease and Development Agreement
  - ii. Attachment 1: Survey Plat of Tract C, Quartz Creek Subdivision
  - iii. Attachment 2: Lease Provisions Required by KPB 17.10

- iv. Attachment 3: Clearing Plan
- v. Attachment 4: Tract C Lease Application

If in conflict, the Lease and Development Agreement shall control.

4. **Definitions.**

- 4.1. Agreement - the final and complete agreement of the parties and shall encompass the Lease and Development Agreement and all Attachments to the Lease and Development Agreement that are incorporated by reference.
- 4.2. Environmental Assessment - An assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of property and the presence, type, concentration, and extent of any Contamination in, on, and under the surface of the property.
- 4.3. Environmental Law - Any federal, state, or local statute, law, regulation, ordinance, code, Lease, order, decision, or judgment from a governmental entity relating to environmental matters, including littering and dumping. It includes, as applicable, 42 U.S.C. 7401-7671 (Clean Air Act); 33 U.S.C. 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); S.C. 5101-5127 (Hazardous Materials Transportation Act); 15 U.S.C. 2601-2692 (Toxic Substances Control Act); AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); and the provisions of 18 AAC (Environmental Conservation) implementing AS 46.
- 4.4. Environmental Liability Baseline - A description, accepted by the Lessor and documented by one or more Environmental Assessments and any other relevant documents, of the existence, location, level, and extent of Contamination in, on, or under the surface of the Property that was neither caused nor Materially Contributed To by the Lessee, nor assumed by the Lessee by reason of assignment.
- 4.5. Lessee – Kiewit Infrastructure West Co., or KIWC.
- 4.6. Lessor - Kenai Peninsula Borough or KPB.
- 4.7. Project - DOT&PF's Sterling Highway MP45-60 Project.
- 4.8. Property –Real Property legally described as Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District
- 4.9. Site Development Materials - Materials used for Site Development. Site Development Materials includes geotextile, gravel, paving, pavement reinforcement materials, and utilities.

## II. Leased Property Description; Term; Rent

5. **The Property.** The KPB leases to KIWC and KIWC leases from the KPB, the following described Property in an “as-is” condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

Tract C Quartz Creek Subdivision, Plat No 94-11 Seward  
Recording District., State of Alaska.

6. **Term.**

- 6.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026.
- 6.2. Renewal Term(s). Unless notice of non-renewal is provided prior to expiration of the Initial Term or KIWC is otherwise in breach of this Agreement, the Agreement may be automatically renewed by KIWC for one additional 1-year Renewal Term on the same rent schedule as the initial term.

7. **Rent.**

- 7.1. Surface Use Rent (“Rent”). The Rent for the use of the Property is Thirty five thousand six hundred forty dollars (\$35,640) per year payable on the commencement date of the Agreement and each anniversary thereof. This Rent shall increase annually at 3% per annum.

## III. Uses; Reservation of Rights by KPB

8. **Authorized Uses.** The Agreement is entered into for the use of the Property for the following authorized uses:

- 8.1. Subject to Section 12 below, Rights Reserved by KPB, KIWC shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Agreement. Surface uses include, but are not limited to, staging and housing of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Tract C Lease Application.
- 8.2. Subject to reclamation obligations, KIWC shall have the right to develop Tract C sufficient for its authorized uses included importing clean, construction grade gravel fill material, installation of utilities, installation of DEC approved septic system or holding tanks, drilling of on-site water wells, and installation of road approaches, pads, and durable surfaces. KIWC shall conserve topsoil on site and maintain such material available for site reclamation at the end of the Agreement.

9. **Prohibited Uses.** Under this Agreement, the following uses on the Property are prohibited:

- 9.1. Installing permanent structures;

9.2. Storage of bulk fuel. Bulk fuel is defined as storage of 25,000 Gallons or more fuel.

10. **Vegetated Buffers/ Clearing Plan.** Uses under this agreement are subject to preserving certain vegetated buffers along the perimeter of the property. Prior to commencement of the Agreement, a clearing plan had been agreed upon and implemented through which certain areas of vegetation were preserved. The cleared area shall be available for KIWC's development and use under this agreement. No further clearing or expansion of use into vegetated areas will take place unless approved by KPB in writing. Vegetated areas may be incorporated into KIWC's storm water management practices. Individual trees within the vegetated buffer that are a substantial hazard risk may be removed by KIWC as necessary without changing the buffer status.

11. **Site Closure.**

11.1. Notwithstanding KPB 17.10.240, prior to termination of this Agreement the KPB reserves the right, at KPB's sole option, to require Lessee to restore the site to a natural condition, free of contamination, to leave the site in a condition suitable for use by another, or any combination thereof. KPB declares an intent for the site to be useful for a commercial business subdivision at the end of the Agreement.

11.2. Pre-closure Inspection. KPB and Lessee will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of Agreement. KPB and Lessee shall agree in writing the condition that site will be left in prior to termination of Agreement. KPB, at its sole discretion, may require Lessee to take any or all of the actions listed in paragraphs A and B of this section.

A. Removal of Improvements. The KPB may require Lessee to remove any and all improvements including septic systems, utilities, imported materials, and closure of wells.

B. Reclamation. Site shall be reclaimed by adding organic topsoil material to bring site to a consistent topographic level as adjacent features and then planted with local plant species.

11.3. Post-closure Inspection. KPB and Lessee will jointly inspect site to confirm site is left in a condition acceptable to KPB and KPB will issue a document to Lessee affirming its findings.

12. **Rights Reserved by KPB.**

12.1. The KPB reserves a 60 foot x 60 foot area on the Property ("Reserved Area"), the exact location is subject to mutual agreement of the parties hereto, for the purposes of siting a communications facility (tower) on the Property. This reservation includes the exclusive right to grant to a third party the right, license and privilege to site, construct, install, and maintain a communications site (tower) or to place commercial communications equipment on the Property and includes ingress and egress rights. This provision is subordinate to the rights and privileges granted under this Agreement

and shall not unreasonably interfere with KIWC's authorized use of the Property or limit KIWC from installing non-commercial communications equipment for the project.

- 12.2. The KPB reserves the right of ingress and egress from the Property, and the right to enter any part of the Property for the purposes of inspection at any reasonable time subject only to the KPB's best efforts, except in the case of an emergency, to coordinate its inspection with the KIWC to minimize interference with the KIWC's operations and activities on the Property.

#### **IV. Cancellation, Expiration or Other Termination**

##### **13. Cancellation.**

- 13.1. This Agreement may be cancelled by KIWC by 90-days written notice to KPB, provided that KIWC is in good standing with the terms and conditions of the lease.
- 13.2. This Agreement may be cancelled at any time upon mutual written agreement of the parties.
- 13.3. Rent will be prorated to the partial term in the case of early cancellation.

##### **14. Lessee Default.**

- 14.1. If KIWC violates a term of the Agreement and the KPB considers that term to be a material obligation of the Agreement, or the violation to be a material deviation from the requirements of the Agreement, the KPB will mail or deliver to KIWC a written notice of the violation. The notice must allow KIWC not less than sixty (60) days to correct the violation, unless the violation constitutes an imminent threat to public health or safety.
- 14.2. If the KIWC does not correct the violation by the time allowed in the notice, the KPB shall:
- a. grant an extension of time to correct the violation if KIWC shows good cause;
  - b. take enforcement action as provided under this Agreement or as available by law; or
  - c. cancel this Agreement.
- 14.3. If the KPB determines that a violation creates an imminent threat to public health or safety, the KPB shall:
- a. Direct KIWC to stop the activity immediately
  - b. Provide KIWC less time than otherwise specified in the Agreement to correct the violation; or
  - c. Correct the violation.
- 14.4. Without limitation, the following shall be deemed either violations of material obligations of this Agreement or material deviations from the requirements of the Agreement:
- a. KIWC fails to pay when due any rent, charge, or fee or royalty specified in the Agreement, including any increase made under this Agreement ;
  - b. KIWC blocks or restricts KPB or its Contractor's access to the Property in violation of Section 11 above;
  - c. KIWC is otherwise found to be in violation of State or Federal law.

15. **Waiver.**

- 15.1. A waiver by the KPB of any default by KIWC of any provision of this Agreement will not operate as a waiver of any subsequent default. If the KPB waives a default, the KPB is not required to provide notice to KIWC to restore or revive any provision under this Agreement. The waiver by the KPB of any provision in this Agreement cannot be enforced or relied upon unless the waiver is in writing and signed on behalf of the KPB.
- 15.2. The KPB's failure to insist upon the strict performance by KIWC of any provision in this Agreement is not a waiver or relinquishment for the future, and the provision will continue in full force.

16. **Disposition of Improvements and Personal Property.** All temporary improvements and personal property of KIWC shall be removed by KIWC, at its sole expense, within ninety (90) days of cancellation, termination, or expiration of the Agreement.

17. **Disposition of Site Development Materials.** Site Development Materials that KIWC completes or places on the Property become part of the KPB-owned realty and property of the KPB upon completion or placement. KIWC may not remove the Site Development Materials unless the KPB approves in writing.

18. **Natural Disasters.** If the parties agree in writing that the Property is unusable, not due to the fault or negligence of either party, to the extent that performance of this Agreement is impossible, this Agreement may be terminated. If KIWC elects to continue to operate, the KPB is under no obligation to continue to perform. Causes for termination under this provision include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, earthquakes, landslides, mudslides, avalanches, tsunamis, or volcanic activity.

19. **National Emergency.** If the federal government declares a national emergency, neither party may hold the other liable for any inability to perform any part of this Agreement as a result of the national emergency.

20. **Survival.**

- 20.1. At the expiration, cancellation, or other termination of this Agreement, the KIWC shall peaceably and quietly vacate the Property and return possession to the KPB.
- 20.2. KIWC's obligations under the following provisions of this Agreement shall survive and remain binding on KIWC after the expiration, cancellation, or other termination of the Agreement:
- a. Section 7 – Rent – of the Agreement;
  - b. Section 14 – Disposition of Improvements and Personal Property – of the Agreement;
  - c. Sections 19 through 24 – Environmental Issues – of this Agreement; and
  - d. All terms related to Reclamation of the Property under Attachment 1 – material Extraction and Disposal Terms & Conditions.



## **V. Environmental Issues**

### **21. Environmental Liability Baseline**

- 21.1. Responsibility for Ascertaining Environmental Condition of Property. The Lessee has the sole responsibility under this Agreement to ascertain the environmental condition and presence of Contamination in, on, and under the surface of the Property, and is conclusively presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Property except as identified in an Environmental Liability Baseline. If known Contamination is on the property that has been closed out under alternate cleanup levels approved by ADEC, Lessee is responsible for following all restrictions set by ADEC, including, but not limited to notifying any assignee of this Agreement in writing of ADEC's restrictions.
- 21.2. Financial Responsibility for Contamination on the Property and on any Affected Property. The Lessee assumes financial responsibility to the Lessor for any Contamination in, on, and under the Property, except for Contamination that is identified in an Environmental Liability Baseline. This is without prejudice to the Lessee's right to seek contribution or indemnity from either prior lessees of the Property, or other potentially responsible parties except for the Lessor.
- 21.3. Establishing an Environmental Liability Baseline.
- a. If the Lessee wants to establish an Environmental Liability Baseline for all or any portion of the Property, the Lessee shall provide the Lessor with an Environmental Assessment for that portion of the Property.
  - b. If the Lessee discovers Contamination in, on, or under the surface of the Property, for any portion of the Contamination to be considered for inclusion in the Environmental Liability Baseline, the Lessee must demonstrate by clear and convincing evidence to the satisfaction of the Lessor that the Contamination proposed for inclusion was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities nor assumed by the Lessee. Contamination caused or Materially Contributed to by activities of the Lessee's sublessees, contractors, and guests on the Property are deemed to be Materially Contributed To by the Lessee.
  - c. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities shall be included in the Environmental Liability Baseline.
- 21.4. Adding to an Existing Environmental Liability Baseline.
- a. If, after an Environmental Liability Baseline is established for any portion of the Property the Lessee discovers Contamination in, on, or under the surface of that portion of the Property having an Environmental Liability Baseline, which Contamination the Lessee or the Lessee's operations or activities did not cause or Materially Contribute To, and which the Lessee did not assume by reason of assignment, the Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Lessor for the Lessor's consideration to add to the Environmental Liability Baseline. The Lessee's additional Environmental Assessment must demonstrate by clear and convincing evidence to the satisfaction of the Lessor which portion of the additional Contamination on the Property was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.

- b. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities may be added to the existing Environmental Liability Baseline.
- 21.5. Lessor's Acceptance or Rejection of Lessee's Environmental Assessment. When the Lessor receives the Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline, the Lessor, in its sole discretion, will do one of the following:
- a. Accept the findings of the Lessee's Environmental Assessment and any other relevant documents to establish an Environmental Liability Baseline for that portion of the Property being assessed or to add to the existing Environmental Liability Baseline.
  - b. Reject the findings of the Lessee's Environmental Assessment for that portion of the Property being assessed and offer the Lessee the opportunity to perform additional environmental testings if the Lessor determines in writing that the findings of the Environmental Assessment are inadequate to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline. The Lessor's written rejection of the Lessee's Environmental Assessment will be based on failure of the Lessee's Environmental Assessment to either:
    - (1) follow generally accepted professional practices in determining the environmental condition of the Property and the presence of Contamination in, on, or under the surface of the Property; or
    - (2) demonstrate the portion of the Contamination that was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities.
  - c. Perform additional environmental testing at the Lessor's expense to verify the environmental condition of that portion of the Property being assessed. If the results of the Lessor's tests conflict with the Lessee's Environmental Assessment, the Lessor and the Lessee will negotiate in good faith an Environmental Liability Baseline or an addition to the existing Environmental Liability Baseline for that portion of the Property being assessed.
- 21.6. Amending the Environmental Liability Baseline to Delete Contamination Caused, Materially Contributed to, or Assumed by Lessee
- a. If, after the Environmental Liability Baseline for any portion of the Property is established, it is discovered that the presence of Contamination identified in the Environmental Liability Baseline was caused or materially contributed to by the Lessee or the Lessee's operations or activities, or assumed by the Lessee by reason of assignment, the Environmental Liability Baseline may be amended to delete that portion of the Contamination that was caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
  - b. The Lessor will have the burden of proof in establishing that the Lessee or the Lessee's operations or activities caused or Materially Contributed to this Contamination.
  - c. If it is discovered that Contamination identified in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, the parties will agree upon an amendment to the Environmental Liability Baseline within a reasonable time.

22. **Release of Lessee.** The Lessor releases the Lessee from liability to the Lessor for Contamination identified by the Environmental Liability Baseline that was not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities.
23. **Required Remediation.** The Lessor is under no obligation to remediate Contamination identified in an Environmental Assessment, except the Lessor shall remediate, or have responsible parties remediate, the Contamination identified in the Environmental Liability Baseline if an agency with such authority requires the Lessee or Lessor to remediate. In the event of such required remediation, the Lessor will make a reasonable effort to coordinate the remediation with the Lessee to minimize disruption of the Lessee's operations or activities and damage to the Lessee's improvements and property. The Lessee releases and holds the Lessor harmless for all costs associated with any damage to, and relocation, removal, and repair of Lessee's improvements and property that result from remediation performed in compliance with this paragraph with respect to Contamination that existed before construction of affected improvements.
24. **Action Against Potentially Responsible Parties.** This article does not restrict either the Lessor or the Lessee from seeking and obtaining cleanup efforts, costs, or damages from other potentially responsible parties for Contamination identified in the Environmental Liability Baseline.

## **VI. Additional Terms and Conditions**

25. **Defense and Indemnification.** To the extent allowed by law and subject to legislative appropriation of available funds, the parties shall mutually indemnify, defend, save and hold each other, including their elected and appointed officers, agents and employees, as applicable, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from either parties' performance or failure to perform in accord with the terms of the Agreement in any way whatsoever. This defense and indemnification shall not mean that a party is responsible for any damages or claims arising from the sole negligence or willful misconduct of the other party, its agents or employees. Each party is solely responsible for damages or claims arising from their sole negligence or willful misconduct.
26. **Insurance.** It is understood that both parties to the Agreement are self-insured at adequate and acceptable to both parties. However, any contractors or subcontractors that use or perform work at the Property shall maintain the following insurance coverages:
- 26.1. **Commercial General Liability Insurance (CGL).** All Contractors and subcontractors of any tier shall provide and maintain, Commercial General Liability Insurance (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 Property, 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 an Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

- 26.2. Worker's Compensation, Employer's Liability Insurance. Contractor and subcontractor(s) of any tier shall provide and maintain, for all of its 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 the minimum amounts required by law. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.
- 26.3. Auto Liability. Contractor and subcontractor(s) of any tier shall provide and maintain, Auto Liability Insurance (ALI). 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.
- 26.4. Proof of Coverage. All insurance shall be primary and exclusive of any other insurance held by the KPB. Upon renewal of insurance coverage during the license, certificates of insurance shall be delivered to the KPB. KIWC on behalf of its contractors shall deliver, within 30 days, complete insurance coverage policy documents to the KPB upon request.
27. Assignments. The Agreement is not assignable.
28. Subleasing. KIWC may not sublease the Property or any part thereof without written permission of the KBP Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of this Master Lease.
29. Waste. KIWC shall not commit waste upon or injury to the lands leased herein.
30. Fire Protection. KIWC shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property, and comply with all laws, regulations, and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.
31. Safety. KIWC shall be solely responsible for maintaining the Property in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the Property as needed for KIWC's use of the Property. KIWC is responsible for the safety of all persons conducting activities on the Property under the Agreement.
32. Sanitation. KIWC shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property shall be kept in a clean and sanitary condition and

every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.

33. **Compliance with Laws.** KIWC shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. KIWC is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.
34. **Responsibility of Location.** It shall be the responsibility of KIWC to properly locate itself and its improvements on the Property.
35. **Liens and Mortgages.** KIWC shall not cause or allow any lien or encumbrance of any kind or nature whatsoever to attach to the Property during the term of the Agreement. In the event that any prohibited lien is placed against the Property, KIWC shall immediately cause the lien to be released.
36. **No Warranty, Express or Implied.** The KIWC accepts the Property AS-IS, WHERE-IS. The Agreement shall be without warranty whatsoever, whether implied or expressed, as to quality, fitness for purpose or suitability for development, or physical condition (including, without limitation the environmental condition of the property). It is the responsibility of the KIWC to satisfy itself prior to executing the Agreement and/or prior to closing as to the type, condition, and quality of the Property.
37. **Jurisdiction.** Any lawsuits filed in connection with the terms and conditions of the Agreement, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
38. **Savings Clause.** Should any provision of the Agreement fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of the Agreement or constitute any cause of action in favor of either party as against the other.
39. **Binding Effect.** It is agreed that all covenants, terms, and conditions of the Agreement shall be binding upon the successors, heirs and assigns of the parties hereto.
40. **Integration and Merger.** The Agreement sets out all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Property whether oral or written. Unless specifically authorized within a provision, no modification or amendment of the Agreement is effective unless in writing and signed by both of the parties.
41. **Warranty of Authority.** KIWC warrants that the person executing the Agreement is authorized to do so on behalf of KIWC.
42. **Counterparts.** The Agreement may be executed in counterpart, 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.

43. **Quiet Enjoyment.** During the term of the Agreement, KIWC will have quiet enjoyment of the Property subject to the terms and conditions stated in the Agreement.

44. **Interpretation.** Both parties have had an opportunity to review the Agreement, to suggest changes, and to consult with legal counsel before signing. The Agreement will not be interpreted in favor of or against either Party.

**LESSOR:**

**LESSEE:**

**Kenai Peninsula Borough**

**Kiewit Infrastructure West, Co.**

By: Charlie Pierce  
Its: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

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

\_\_\_\_\_  
Sean Kelley, Deputy Borough Attorney

**KPB NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charlie Pierce, known to me to be the Mayor of the Kenai Peninsula Borough, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kenai Peninsula Borough, for the uses and purposes therein set forth and who is authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission expires: \_\_\_\_\_

**KIWC NOTARY ACKNOWLEDGMENT**

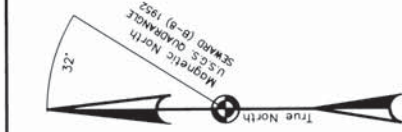
**STATE OF ALASKA**                    )  
  ) **ss.**  
**THIRD JUDICIAL DISTRICT**    )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, Kiewit Infrastructure West, Co., and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kiewit Infrastructure West, Co., for the uses and purposes therein set forth and who is authorized by said company to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission Expires:\_\_\_\_\_



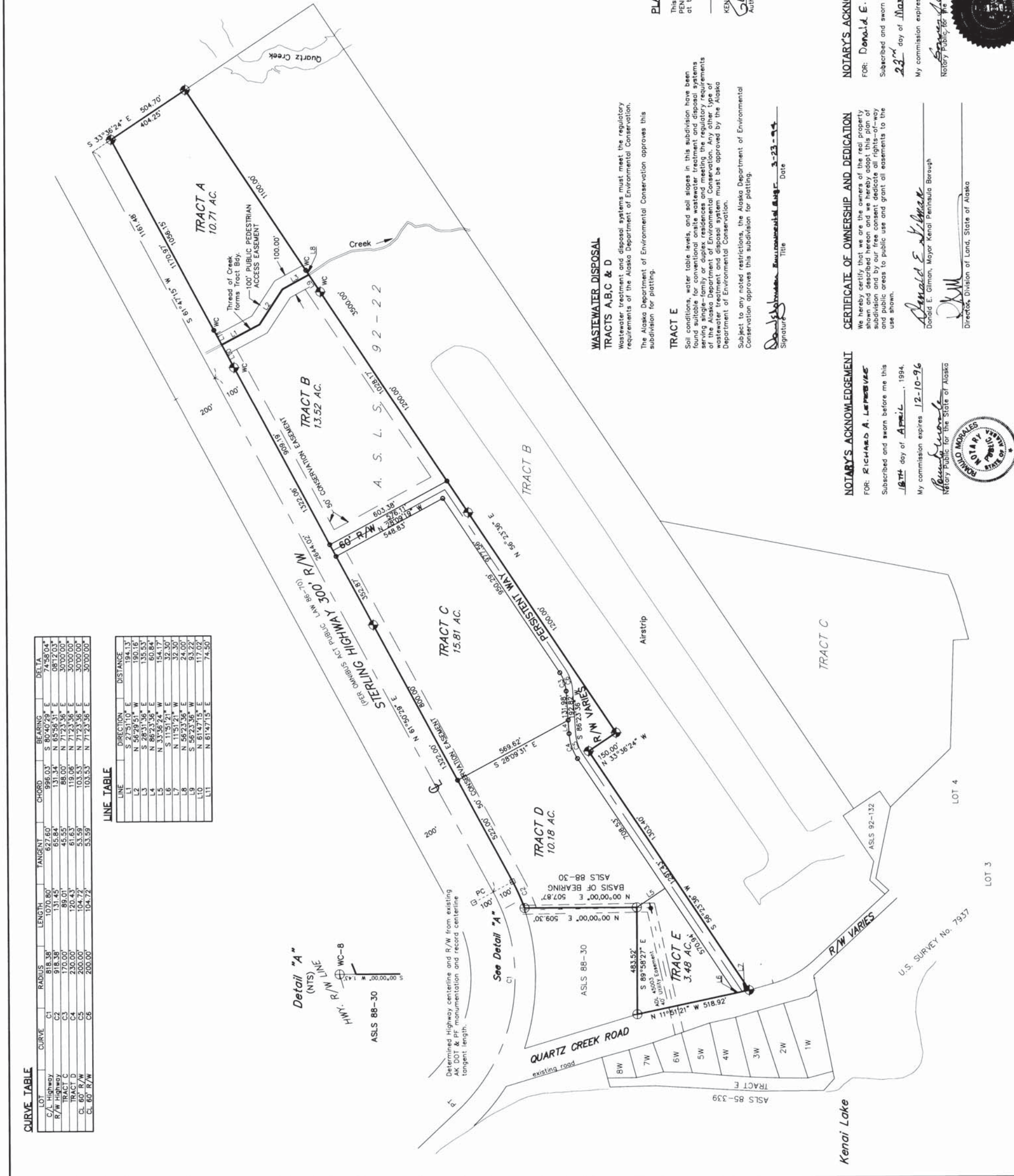
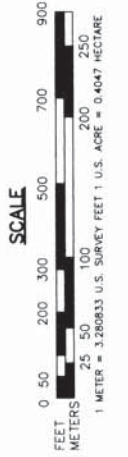


- LEGEND**
- ⊕ PRIMARY MONUMENT RECOVERED THIS SURVEY
  - SECONDARY MONUMENT RECOVERED THIS SURVEY
  - ⊙ AK DOT & PF 6" x 6" CONC. R/W MONUMENT RECOVERED THIS SURVEY
  - ⊕ PRIMARY MONUMENT SET THIS SURVEY
  - ⊙ SECONDARY MONUMENT SET THIS SURVEY
  - 1/2" REBAR WITH PLASTIC CAP.

- NOTES**
- 1) Water supply and sewage disposal systems shall be permitted only in conformance with applicable requirements of 18 AAC 70, 18 AAC 72, and 18 AAC 80.
  - 2) No direct access to state maintained ROWS permitted unless approved by State of Alaska Department of Transportation.
  - 3) No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
  - 4) BUILDING SET BACK - A building set back of 20 ft. is required from all street rights-of-way unless a lesser standard is approved by resolution of the appropriate Planning Commission.



94-11  
RECORDED  
SEWARD REC. DIST. OF  
DATE 5/15/94  
BY 5134  
REGISTERED PROFESSIONAL ENGINEER  
ALASKA  
SOLDOTNA, AK 99669



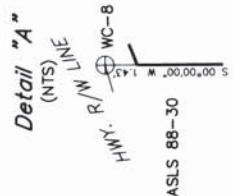
**CURVE TABLE**

LOT	CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C/L Highway	C1	818.38'	1070.80'	627.60'	996.03'	S 80°40'29" E	74°58'04"
R/W Highway	C2	918.38'	131.34'	65.84'	131.34'	N 65°56'31" E	06°12'03"
TRACT C	C3	170.00'	89.01'	45.55'	88.00'	N 71°23'36" E	30°00'00"
TRACT D	C4	230.00'	120.43'	61.63'	119.06'	N 71°23'36" E	30°00'00"
CL 60' R/W	C5	200.00'	104.72'	53.59'	103.53'	N 71°23'36" E	30°00'00"
CL 60' R/W	C6	200.00'	104.72'	53.59'	103.53'	N 71°23'36" E	30°00'00"

**LINE TABLE**

LINE	DIRECTION	DISTANCE
L1	S 27°51'10" E	194.13'
L2	N 56°29'51" W	190.16'
L3	S 28°31'36" E	135.53'
L4	N 86°23'36" E	60.84'
L5	N 33°36'24" W	154.17'
L6	S 11°51'21" E	32.30'
L7	N 11°51'21" W	32.30'
L8	N 56°23'36" E	24.00'
L9	S 56°23'36" W	93.72'
L10	N 61°47'15" E	117.62'
L11	N 61°47'15" E	74.50'



**WASTEWATER DISPOSAL TRACTS A, B, C & D**  
Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation. The Alaska Department of Environmental Conservation approves this subdivision for platting.

**TRACT E**  
Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences and meeting the regulatory requirements of the Alaska Department of Environmental Conservation. Any other type of wastewater treatment and disposal system must be approved by the Alaska Department of Environmental Conservation. Subject to any noted restrictions, the Alaska Department of Environmental Conservation approves this subdivision for platting.

Signature: \_\_\_\_\_ Date: 3-23-94  
Title: Environmental Engineer

**NOTARY'S ACKNOWLEDGEMENT**  
FOR: **RICHARD A. LEFEBVRE**  
Subscribed and sworn before me this 18TH day of APRIL, 1994.  
My commission expires 12-10-96  
Notary Public for the State of Alaska



**NOTARY'S ACKNOWLEDGEMENT**  
FOR: **Donald E. Gilman**  
Subscribed and sworn before me this 23rd day of MARCH, 1994.  
My commission expires 7/24/97  
Notary Public for the State of Alaska



**PLAT APPROVAL**  
This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of December 13, 1993.  
KEMAL PENINSULA-BOROUGH by \_\_\_\_\_  
Authorized Official

**QUARTZ CREEK SUBDIVISION**  
(A Resubdivision of Tract A ASLS 92-22)  
KENAI PENINSULA BOROUGH, OWNER  
144 N. Binkley  
Soldotna, AK 99669  
LOCATION  
56,814 AC. M/L WITHIN UNSURVEYED SEC. 30, T. 5 N., R. 3 W., SD 10 (SUBDIVISION SEC. 24, T. 5 N., R. 3 W., SW 1/4) THE KENAI PENINSULA BOROUGH IN SEWARD RECORDING DISTRICT.  
Surveyed by: MCLANE & ASSOCIATES  
P.O. BOX 468  
Soldotna, AK 99669  
Date: Nov. 29, 1993  
Project No.: 922018p  
Drawn by: \_\_\_\_\_  
Scale 1" = 200'  
Checked by: :MSM  
KPB File No.: 93-185

**CERTIFICATE OF OWNERSHIP AND DEDICATION**  
We hereby certify that we are the owners of the real property shown and described hereon and we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way and public areas to public use and grant all easements to the use shown.  
Donald E. Gilman, Mayor Kenai Peninsula Borough  
DKM  
Director, Division of Land, State of Alaska



**ATTACHMENT 2**  
**LEASE PROVISIONS REQUIRED BY KPB 17.10**

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lessee may assign the lands upon which Lessee has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel the Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 9 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or Lessee's successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) **Rental for Improvements or Chattels not Removed.** Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) **Re-rent.** In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) **Responsibility for Location.** It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) **Rights of Mortgage or Lienholder.** In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) **Sanitation.** The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

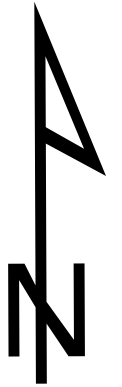
(17) **Shore Land Public Access Easement.** As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPBA 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

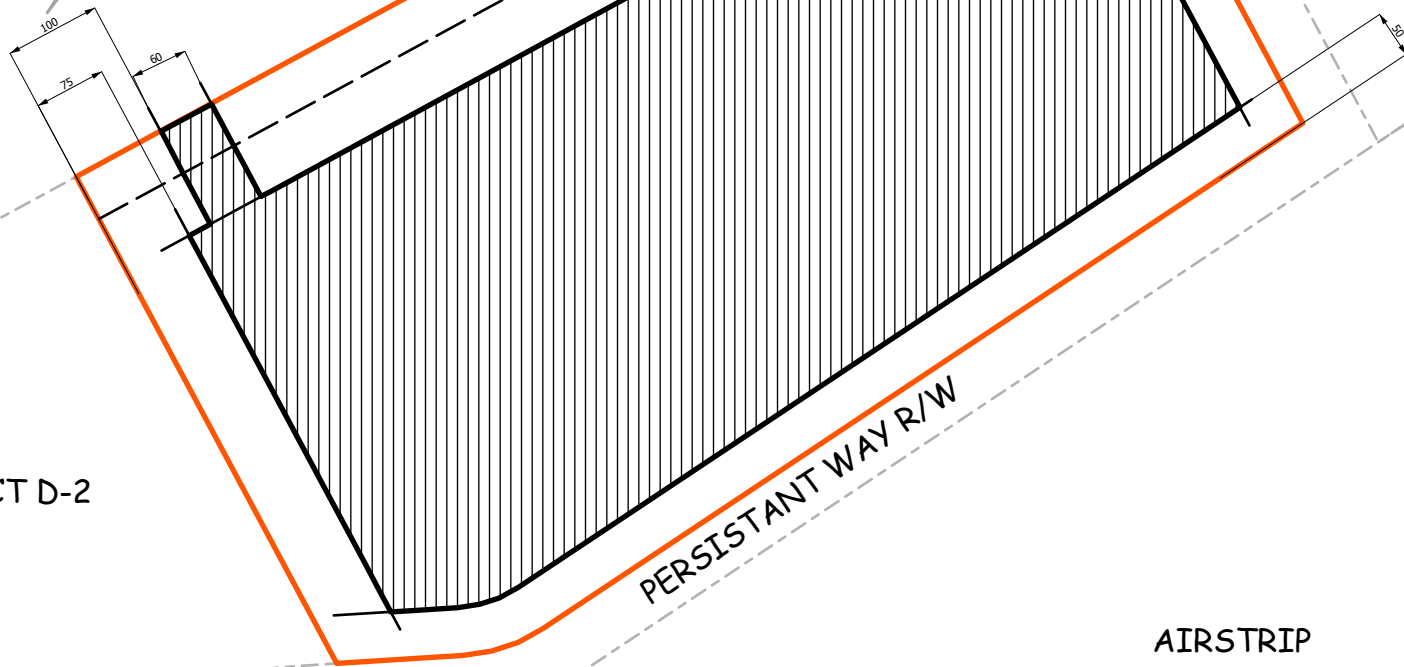
NOTE: All dimensions given in feet



STERLING HIGHWAY 300' R/W

TRACT B

adjust as required by DOT



**Legend**

- ▨ Clearing Limits
- ▭ TRACT C
- ▭ Parcels

LEGAL DESCRIPTION:  
T 5N R 3W SEC 36 SEWARD  
MERIDIAN SW 0940011  
QUARTZ CREEK SUB TRACT C

**Attachment 3  
Clearing Plan**

Proposed Clearing Limits  
for LMD 20-17.

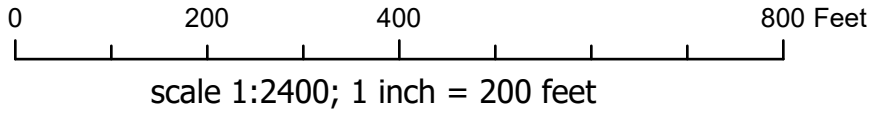
Permittee: Kiewit  
Infrastructure

-KPB Land Management  
9/23/2020

TRACT D-2

AIRSTRIP

TRACT D-1



Project Number:  
OA33028/CFHWY00684  
Date: 1/20/2021

# Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC

## Tract C Lease Application

*ATTACHMENT 4 to Lease Agreement*

*Prepared For:*

Kenai Peninsula Borough Land Management  
Division

Section

Page

*Prepared By:*

Kiewit Infrastructure West Co.

2000 W. International Airport Rd. C-6

Anchorage, AK 99502

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# Acronyms and Abbreviations

ADOT&PF	Alaska Department of Transportation & Public Facilities
KIWC	Kiewit Infrastructure West Co.
KPB	Kenai Peninsula Borough
SWPPP	Storm Water Pollution Prevention Plan
APDES	Alaska Pollutant Discharge Elimination System
SPCC	Spill Prevention Control and Countermeasure
HMA	Hot Mix Asphalt



# Introduction

KIWC proposes a negotiated lease of Tract C.

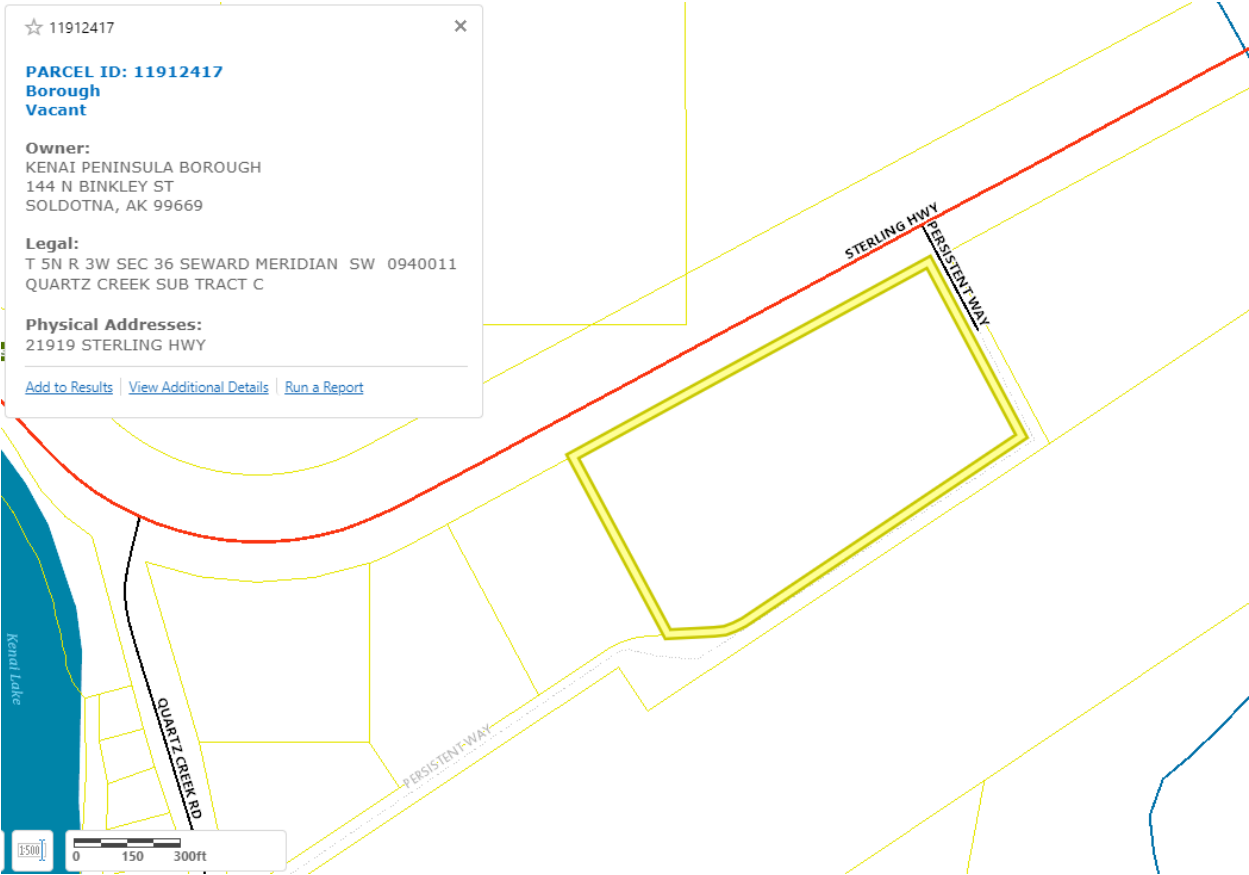
The parcel known as Tract C is described as the following:

Legal Description: T 5N R 3W SEC 36 SEWARD MERIDIAN SW 0940011 QUARTZ CREEK SUB TRACT C

Physical Address: 21919 Sterling Hwy

Tax Parcel ID: 11912417

Acreage: 15.81 Acres



The proposed primary use for this parcel under the negotiated lease is to develop a temporary project field office; and temporary materials and equipment laydown area to facilitate construction activities for the Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Project for AKDOT&PF.

The proposed term for the negotiated lease is April 2021 until the highway project completion. The project is anticipated to be completed by the end of year 2025.

# Existing Improvements

Under existing KPB Land Use Permit LMD 20-17, KIWC has completed 10.8 Acres of timber clearing and salvage; and soil sampling at Tract C during the week of November 16<sup>th</sup>, 2020. The current condition of the parcel is shown in the photo below.



*Figure 1 - Site Photo 11/20/2020*

A copy of Land Use Permit LMD 20-17 is attached.

Prior to the work performed in 2020 under the land use permit, the parcel existed as a wooded lot with a paved driveway apron access at the intersection of Persistence Way and Sterling Hwy leading to a single lane gravel road.

# Proposed Permanent Improvements and Temporary Structures

During the lease, KIWC proposes to develop Tract C to be a working field office. Site work including utility installation and earthwork will be required to facilitate access and installation of the temporary office structures. A portion of this work may be considered permanent improvement for integration into the future development plan.

Proposed permanent improvements include the following:

- Utility Installation
  - Electric Service (Chugach Electric Association Inc.)
  - Phone Service (TelAlaska)
  - Leach Field Sewage System
  - Potable Drinking Water Well System
- Site Earthwork
  - Grubbing
  - Drainage
  - Grading and placing gravel for a driveable working surface

The preliminary plan for the site is shown below in Figure 2. This plan includes several temporary structures that are planned to be removed by the end of the lease term.

Proposed temporary structures include the following examples:

- Job office - consisting of mobile trailer units
- Area Lighting
- Fencing and Entrance Gates
- Hot Mix Asphalt (HMA) Plant
- Concrete Batch Plant
- Bathroom facilities
- Parking area
- Secondary Access to Sterling Hwy
- Materials testing lab
- Maintenance facility
- Fuel Storage

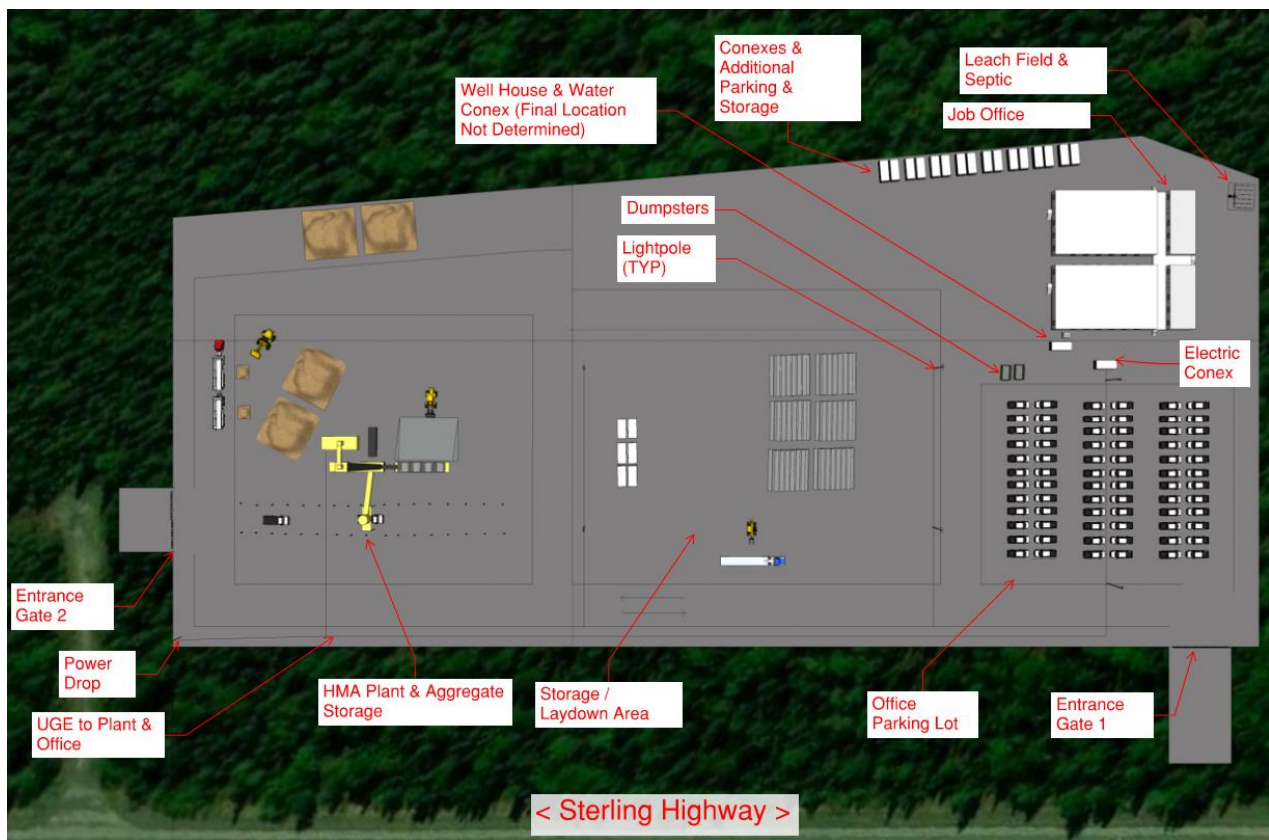


Figure 2 - Preliminary Site Layout

## Plan for Future Use

KIWC intends to cooperate with KPB's future development plan for Tract C. Engineering resources will be available.

## SWPPP and SPCC

The site work at Tract C including ground disturbing work, will be performed and maintained in adherence with the APDES Construction General Permit (CGP) and the project SWPPP and SPCC Plan programs for the duration of the lease. Documentation for this program will be located at the project office. Reporting of spills or discharges will follow the protocols listed in the program.