

MATERIAL SITE LEASE AGREEMENT

This Material Site Lease Agreement (Agreement) is entered into by the Kenai Peninsula Borough, an Alaska municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (KPB or Lessor), and _____, whose mailing address is _____ (Lessee) (together, the Parties). This Agreement becomes effective on the date of signature by KPB (the Effective Date).

PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

1. BACKGROUND. Lessor owns certain real property located in the Kenai Peninsula Borough, in the State of Alaska, that is more particularly described in Exhibit 1 attached hereto (the Property). For good and valuable consideration, the Parties agree that Lessor will grant Lessee the right to use a portion of the Property, the Leased Premises identified in Section 4, "Description of Property", in accordance with the terms of this Agreement.

2. AUTHORIZED CONTACT. All communications about this Agreement must be directed as follows, and any reliance on a communication with a person other than who is listed below is at the Party's own risk.

LESSOR

Name: Kenai Peninsula Borough
Attn: Land Management Division
Re: Lease No. _____
144 N. Binkley St.
Soldotna, AK 99669

LESSEE

Name: _____
Attn: _____
Re: _____

3. CONTRACT DOCUMENTS. As authorized by Kenai Peninsula Borough Ordinance _____, 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: Description of the Property and the Leased Premises
- Exhibit 2: Leased Premises Depiction
- Exhibit 3: Material Site Mining and Reclamation Plan
- Exhibit 4: Memorandum of Lease

If in conflict, the order of precedence will be: the Agreement, Appendix A, Exhibit 1, Exhibit 2, Exhibit 3, and then Exhibit 4.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY. Subject to the terms and conditions of this Agreement, Lessor hereby grants to Lessee a leasehold interest in and to that certain portion of the Property containing 86.75 Acres, more or less, as described and depicted on Exhibit 1 and Exhibit 2 of this Agreement, attached hereto (collectively, the Leased Premises), for the specific purpose of development, extraction, operations, maintenance and reclamation of a Sand and Gravel Material Site as defined in Section 9, "Use" together with non-exclusive access beginning directly off of the Basargin Road right-of-way as depicted on Exhibit 2 of this Agreement.

5. TERM.

(a) The initial term will commence on the effective date and end on December 31, 2030 (the Initial Term). January 1 is determined to be the Anniversary Date for the lease term. That period between the commencement date and December 31, 2026 is considered a partial lease year, prorated by the number of months and partial months for which rent is due and paid.

(b) Lessee will have the right and option to extend the term of this Agreement for one (1) successive term of five (5) years (a Renewal Term), provided Lessee is not in default or in breach of this Agreement. The Renewal Term will commence automatically, unless Lessee delivers written notice to Lessor, not less than -ninety (90) days prior to the end of the then-current Term, of Lessee's intent not to renew, or unless Lessee is in default or in breach of this Agreement. For purposes of this Agreement, Term includes the Initial Term and any applicable Renewal Term.

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover will constitute and be construed as a tenancy from month-to-month only, upon the same terms and conditions and including a monthly escalation to the preceding Rent of fifteen percent (15%) in addition to a \$8.00 per yard fee for any and all material removed during the holdover period.

6. TERMINATION.

This Agreement may be terminated as follows:

(a) by Lessee upon thirty (30) days prior written notice to Lessor, if Lessee is unable to obtain or maintain any required insurance, approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the development and operation of the Materials Site as now or hereafter intended by Lessee;

(b) by Lessee upon sixty (60) days prior written notice to Lessor for any reason or no reason, so long as Lessee pays Lessor a termination fee equal to the remaining Rent due under the existing Term until such Term expires, and subject to removal requirements contained within Section 12, "Equipment, Fixtures, and Removal".

(c) by Lessor in the event of a default in the performance or observance of any of the Agreement terms or conditions, and if such default continues thirty (30) days after written notice of the default, KPB may cancel the Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the contract is in default.

7. RENT. Beginning on the Effective Date, Lessee must pay to Lessor a monthly rent payment of _____ Dollars (\$_____.00) (Rent), at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each Material Site Lease Agreement

Site Name: Eagle Lake Materials Site

Anniversary Date, determined to be January 1, Rent will adjust annually by three percent (3%) over the prior year's Rent amount. Should Lessee fail to submit a monthly Rent payment in full on or before the fifteenth (15th) day of each calendar month in which Rent is due, a penalty of 10 percent (10%) of the monthly Rent amount will be charged to the Lessee for each month past due.

8. TAXES. Lessee must pay any real or personal property taxes assessed on, or any portion of such taxes attributable to, the leasehold improvements as defined in Section 9, "Use", located on the Leased Premises, including any taxable private leasehold interests.

9. USE. The Leased Premises are being leased for the specific purpose of developing, operating, maintaining and reclaiming a sand and gravel material site, including stripping, excavating, extracting, processing, and removing, for use, sale, or other disposition of the sand, gravel and rock materials, permanently restoring and stabilizing mined areas, and related improvements and uses. Lessee may, subject to the foregoing, make any improvement, alteration, or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein, pursuant to prior written approval from KPB through an approved materials mining and reclamation plan. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth reasonably necessary to Lessee's use of the Leased Premises for the intended purposes.

The following uses are specifically prohibited uses:

- A) No residential structures or permanent improvements are allowed on the site.
- B) No solid waste disposal or burial of foreign materials are allowed on the site.
- C) No fuel storage in excess of 750 gallons are allowed on the site.

10. SECURITY AND SAFETY MEASURES.

(a) Gate and Site Security. Lessee may install, operate and maintain a locked gate or other site security measures for the leased area only provided Lessee first provides KPB, for its review and approval, a "security and public safety plan" showing the location and specification of the security features, lock sharing mechanisms, and public safety signs and visibility signals. Lessee may also undertake any other appropriate means to restrict public access in the leased area, its equipment and facilities, and related improvements, including, without limitation, posting signs and signals for safety, security, and access control purposes.

11. ACCESS, MAINTENANCE, AND SIGNAGE.

(a) Access. During the Term, Lessee, and its sublessees, licensees, customers, guests, agents, 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, except as provided by Lessor's reserved rights contained in Section 4, "Description of Property" and Section 17, "Co-located Rights of Access Reserved By Lessor". Lessor for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors, and assigns non-exclusive access across an existing access road ("Access Road") to the extent depicted on Exhibit 2 for ingress and egress, for the Term(s) of this Lease, with the right to reconstruct, improve, add to, enlarge, and change, over, across, and through any access for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth.

(b) Access Maintenance. During the term of the Lease, Lessee agrees to perform its own maintenance of the Access Road necessary to conduct the Performance Requirements contained in Section 15. "Operating Requirements". Access Road maintenance includes plowing, sanding, grading, capping, ditching, culvert

placement, gate operations, gate maintenance, signage and repair necessary to upkeep the Access Road without significant degradation. Maintenance must be conducted to keep the road in a safe and usable condition during all times the site is operational.

(c) Gate Operation. During the term of the Lease, Lessee agrees to operate the Access Road gate, including specifically the following:

1) to provide, install and maintain "GATE CLOSED AHEAD" caution signs meeting MUTCD specifications for OM-1 object marker signs, placed approximately 500 feet on each side of the gate, and to install and maintain red and white or yellow and black reflective barrier markings prominently on the top rail of the gate and top of gate posts along with installation and maintenance of an OM-4 object marker sign attached to each side of the gate, which may be in the alternative form of a 24" stop sign on each side of the gate.

2) to provide, install and maintain a road sign located along Access Road, visible from the Basargin Road intersection, signaling and stating "Dead End" "Closed Gate Ahead".

3) to secure the gate with a locking mechanism that is in common control of Lessee and Lessor, such as a shared combination lock or dual locks with one of Lessee's and one of Lessor's.

4) to open and close the gate as necessary and convenient to access the Lease Premises and to conduct Lessee's Use and the Performance Requirements contained in Section 15, "Operating Requirements".

(d) Site Identification Sign. During the term of the Lease, Lessee may install and maintain a site identification sign along the Access Road to identify the site, identify the Lessee or Lessee's business, and to provide such other information to Lessee's customers, operators, and the public to advance the purposes of the Lease. Site Identification Sign maximum size limitations are 24 square feet in area.

(e) Site Maintenance. Lessee agrees to use the Leased Premises in a manner consistent with the lease terms, and keep and maintain the Leased Premises and related, non-exclusive access, in good condition free of environmental and fire hazards.

(f) Utilities. Lessee is solely responsible for installing separate meters for utility use and payment, as applicable,

12. EQUIPMENT, FIXTURES, AND REMOVAL. Lessee's improvements will at all times be the personal property of Lessee or its sublessees, licensees, and customers, as applicable. Lessee and/or its sublessees, licensees, and customers will have the right to install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, provided that such are consistent with the approved mining and reclamation plan, and such property, including equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. Unless otherwise agreed to in writing by the Parties, within the term of this agreement or earlier termination of this Agreement, or upon cessation, abandonment, or non-use according to the operational standards contained in Section 15 "Operating Requirements", Lessee must remove its improvements and restore the Leased Premises to reclamation plan standards free of contamination, reasonable wear and tear excepted, and perform all obligations under this Agreement. Any property not so removed will be deemed abandoned and may be removed and disposed of by Lessor in such manner as Lessor may determine, without

any obligation on the part of Lessor to account to Lessee for any proceeds therefrom. Time is of the essence.

Lessor may, at the time of removal, elect in writing to retain functioning pads, excavation areas, material stockpiles, and access ways internal to the material site, in a condition free of both contamination and hazards with all other improvements removed by Lessee, subject to inspection by, and of condition satisfactory to, Lessor.

13. ASSIGNMENT. Lessee may assign this Agreement to any person or entity, at any time with prior written consent of KP B's Mayor, so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, providing all conditions of the Agreement have been met including but not limited to payments of all amount due, upon thirty (30) days' written notice to Lessor, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of Lessee's assets in the production area where the Leased Premises is located.

14. SUBLEASING

(a) Subleasing. Lessee will have the exclusive right to sublease or grant licenses to use the materials sites and/or Lessee's improvements with prior written consent of KP B's Mayor and as long as the sublessee or licensee agrees and complies with all terms of this Agreement.

(b) Authorized Contact of Sublessee. Lessee must provide Lessor the name, telephone number, and email address of the authorized contact for all Sublessees, which authorized contact is responsible for Sublessee's day-to-day operations or activities on the Leased Premises.

15. OPERATING REQUIREMENTS

(a) In performance of the Lease, Lessee must operate the materials site for no less than 90-days between June 1st and October 15th of each calendar year within the Term(s) of the Lease.

(b) In performance of the Lease, Lessee shall submit to Lessor, a mining and reclamation plan, which shall be subject to the approval of the Lessor, and such approval shall not be unreasonably withheld. The mining and reclamation plan shall identify the location areas to be mined and areas to be reclaimed during the lease. At the end of the lease, all areas mined during the term of lease shall have slopes not exceeding 2:1.

Reclamation shall meet the following minimum standards:

- i) grading slopes to 2:1 or a lesser steepness;
- ii) grading drainage toward low lying features;
- iii) distributing top soil to a minimum of 4 inches;
- iv) broadcasting seed consisting of a mix of the following pure live seed at a rate of 25#/Acre
 - a. Norcoast Bering Hairgrass
 - b. Arctared Red Fescue
 - c. Nortran Tufted Hairgrass
 - d. Gruening Alpine Bluegrass;and
- v) application of 10-10-10 fertilizer at a rate of 250 lbs/acre

(c) In performance of the Lease, Lessee must produce a minimum of 15,000 cubic yards of material

each year and may produce and sell, or otherwise dispose, a maximum of 25,000 cubic yards of material each year, or partial year, within the Term of the Lease. The first 25,000 cubic yards of material, each year, or partial year, within the term of the lease, is included in the annual Rent. Lessee must provide a full accounting of materials removed from the site within 30-days of each anniversary date of the lease term, and within 30-days of the end of the final term or termination date. Lessee may additionally produce and sell or otherwise dispose materials in excess of the 25,000 cubic yard annual allocation. Any materials removed in a year, or partial year, in excess of 25,000 CY is subject to Royalty payment requirements contained in Section 16 in that same year. The respective required minimums and allowable maximum allocations are not transferable between lease years, and must be accounted and reconciled in the respective year. A signed statement of materials removed during the year shall be submitted by Lessee to Lessor within 30-days of the end of that lease year, along with supporting dated volumetric accounting records. "Materials Removed" means sand and gravel materials transported off site, and does not include materials excavated and stored on site or materials moved within the site for site improvement, Access Road maintenance or improvements, or reclamation purposes.

(d) In the performance of the Lease, Lessee shall comply with those provisions of KPB 21.29 applicable to the Prior Existing Use status of the land, including without limitation, requirements for filing a material site reclamation plan, reclamation bonding, and hours of operation or applicable waivers and procedures for variance.

16. ROYALTY

(a) Materials removed from the Materials Site under lease, after the first 25,000 cubic yards removed in a single year of the lease, between January 1 and December 31, are subject to payment of royalty by Lessee to Lessor based on actual volume of materials removed in cubic yards. The royalty rate for the term of the Lease is \$3.25/cubic yard. Payment of Royalty shall accompany the signed statement of materials removed, due within 30-days of the end of the lease year: due by January 30th.

17. CO-LOCATED RIGHTS OF ACCESS RESERVED BY LESSOR. Lessor reserves the unrestricted right to access through the Lease area, along with the right to develop access, grant access easements, and to use such access for the purpose of accessing Lessor's surrounding lands, and developing those lands for similar material extraction purposes. Lessor covenants to notify Lessee with indication of the location of the access and the nature of the use at least 30-days prior to use or development Lessor to make a reasonable effort to work with the lessee to avoid the Lessee's active or proposed future mining and processing areas.

18. COVENANTS, WARRANTIES AND REPRESENTATIONS.

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

(b) Lessor may not do or knowingly permit anything during the Term that will unreasonably interfere with or negate Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws.

(c) To the best of Lessor's knowledge, Lessor has complied with, and will comply with, all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by Lessor or, to the knowledge of Lessor, by any prior owner or user of the Property. To the knowledge of Lessor, there has been no release of or contamination by hazardous materials on the Property.

(d) Except for the sublessees and licensees of Lessee, there currently exist no 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, nor any equity or interest in Lessor if Lessor is an entity; and there are no parties (other than Lessor) in possession of the Leased Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

(e) 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. Nothing in this Agreement, including such cooperation, will be construed as creating a partnership between the Parties.

19. REQUIRED INSURANCE COVERAGES. Insurance coverages required under this Agreement must be primary and exclusive of any other insurance carried by Lessor. Minimum levels of insurance coverage required under this Agreement will remain in effect for the life of this Agreement. If Lessee's policies contain higher limits, Lessor will be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be delivered to Lessor at the time of submission of the signed Agreement. Lessor may request copies of required policies and endorsements, which must be provided within ten (10) days of Lessor's request. Updated certificates must be provided upon insurance coverage renewal, where applicable.

(a) Lessee must provide and maintain commercial general liability insurance (CGL). The CGL policy must be written on an occurrence basis and with a limit of not less than one million dollars (\$1,000,000.00) per occurrence. If necessary to provide the required limits, the CGLs policy's limits may be layered with an umbrella or excess liability policy. This policy must name Lessor as additional insured with a waiver of subrogation.

(b) Lessee must provide and maintain commercial automobile liability insurance. The commercial automobile liability policy must include a combined single limit of not less than one million dollars (\$1,000,000.00). Coverage must include non-owned and hired car coverage. This policy must name KPB as additional insured with a waiver of subrogation.

(c) Lessee must provide and maintain workers' compensation insurance in accordance with the laws of the State of Alaska for all of its employees engaged in work 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. Subrogation will be waived.

(d) Lessee must maintain Pollution Liability Insurance covering pollution legal liability. Coverage must be maintained in an amount of at least two hundred fifty thousand dollars (\$250,000.00) per loss. This policy must name KPB as additional insured with a waiver of subrogation.

(e) 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, contractor(s) or subcontractor(s) of any tier, and any such coverage and limits will not be deemed as a limitation on the liability of the Lessee, sublessee, contractor(s) or subcontractor(s) of any tier under the indemnities granted to Lessor in this Agreement.

(f) Notwithstanding the foregoing, Lessee's obligations to provide insurance may be met by providing evidence of fiscal responsibility or self-insurance that is acceptable to Lessor. Lessee warrants that it has the capacity to self-insure for the risks and coverages specified and will provide evidence of the lines and limits of coverage specified in "Required Insurance Coverages" in this Section. Lessee must provide Lessor with proof of continuing ability to provide self-insurance within thirty (30) calendar days of any

written request by KPB for such proof. If there is any change in the ability to self-insure, Lessee must provide Lessor with immediate notice of such change and must immediately purchase insurance as set forth in this Section.

20. Environmental Liability Baseline.

- 1.1. Responsibility for Ascertaining Environmental Condition of Property. 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.
- 1.2. Financial Responsibility for Contamination on the Property and on any Affected Property. Lessee assumes financial responsibility to the Borough 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 Lessee's right to seek contribution or indemnity from either prior lessees of the Property, or other potentially responsible parties except for the Borough.
- 1.3. Establishing an Environmental Liability Baseline
 - a. If Lessee wants to establish an Environmental Liability Baseline for any or all portions of the Property, Lessee must provide the Borough with an Environmental Assessment for that portion of the Property prior to its use.
 - b. If 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, Lessee must demonstrate by reasonable evidence to the satisfaction of the Borough that the contamination proposed for inclusion was not caused or materially contributed to by Lessee or Lessee's operations or activities nor assumed by Lessee. Contamination caused or materially contributed to by activities of Lessee's sublessees, contractors, and guests on the Property are deemed to have been materially contributed to by Lessee.
 - c. Only that portion of contamination not caused or materially contributed to by Lessee or Lessee's operations or activities must be included in the Environmental Liability Baseline.
- 1.4. Adding to an Existing Environmental Liability Baseline
 - a. If, after an Environmental Liability Baseline is established for any portion of the Property, Lessee discovers contamination in, on, or under the surface of that portion of the Property having an Environmental Liability Baseline, which contamination Lessee or Lessee's operations or activities did not cause, or to which Lessee or Lessee's operations did not materially contribute, and which Lessee did not assume by reason of assignment, Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Borough for the Borough's consideration to add to the Environmental Liability Baseline. Lessee's additional Environmental Assessment must demonstrate by reasonable evidence to the satisfaction of the Borough which portion of the additional contamination on the Property was not caused by Lessee or Lessee's activities, or to which Lessee or Lessee's activities did not materially contribute.
 - b. Only that portion of contamination not caused by Lessee or Lessee's operations, or to which Lessee or Lessee's operations did not materially contribute, may be added to the

existing Environmental Liability Baseline.

- 1.5. The Borough's Acceptance or Rejection of Lessee's Environmental Assessment. When the Borough receives Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline, the Borough, in its sole discretion, may do one of the following:
 - a. Perform additional environmental testing at Lessee's expense to verify the environmental condition of that portion of the Property being assessed. If the results of the Borough's tests conflict with Lessee's Environmental Assessment, the Borough and 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; or
 - b. Accept the findings of 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; or
 - c. Reject the findings of Lessee's Environmental Assessment for that portion of the Property being assessed and offer Lessee the opportunity to perform additional environmental testing if the Borough 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 Borough's written rejection of the Lessee's Environmental Assessment will be based on failure of 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 by Lessee or Lessee's operations, or to which Lessee or Lessee's operations did not materially contribute.
- 1.6. Amending the Environmental Liability Baseline to Delete Contamination Caused or Assumed by Lessee, or to which Lessee Materially Contributed.
 - 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 assumed by Lessee or Lessee's operations, or to which Lessee or Lessee's operations materially contributed, the Environmental Liability Baseline may be amended to delete that portion of the Contamination that was caused by Lessee or Lessee's operations, or to which Lessee or Lessee's operations materially contributed.
 - b. The Borough will have the burden of proof to establish that Lessee or Lessee's operations or activities caused or materially contributed to the contamination.
 - c. If it is discovered that contamination identified in the Environmental Liability Baseline was caused by Lessee or that Lessee or Lessee's operations materially contributed to the contamination, the Parties will agree upon an amendment to the Environmental Liability Baseline within a reasonable time.

21. NON-EXCLUSIVITY. Lessor acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, or reserved herein, there are no prior existing rights, uses, or authorization granted to third parties. Upon at least sixty (60) days prior written notice to Lessee, Lessor reserves the right to grant rights or authorization for third parties to locate improvements or uses in, over, below or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment, operations or expansion. Lessor further expressly reserves the right to use,

and grant rights or authorizations for third parties to use the Access Road extending from Basargin Road to and along the east boundary of the lease premises.

22. LESSEE LIABILITIES. In addition to other liabilities under this Agreement, Lessee has the following liabilities and agrees:

(a) That Lessee assumes all risk of loss, damage, or destruction to Lessee's improvements on the Leased Premises;

(b) That Lessee 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 or equipment on the Leased Premises;

(c) That Lessor has no duty, either before or during the lease Term, to inspect the Leased Premises or warn of hazards and if Lessor inspects the Leased Premises, it will incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section will survive the termination or revocation of this Agreement, regardless of cause; and

(d) That Lessee has an affirmative duty to protect from damage the Property and interests of Lessor related to this Agreement.

23. INDEMNIFICATION. Lessee agrees to defend, indemnify, and hold harmless Lessor, 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 the Lessee. 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 Lessee arise immediately upon notice from Lessor of any action, claim, or lawsuit. Lessor will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where Lessee 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 Lessor relating to Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless Lessor as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessor, its employees, public officials, and volunteers.

24. INSPECTION. Lessor reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Agreement. Except in case of emergency, Lessor will provide Lessee with at least forty-eight (48) hours' prior written notice of Lessor's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during Lessor's inspection.

25. FORCE MAJEURE. The time for performance by Lessor or Lessee 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 Lessor or Lessee, as the case may be.

26. DEFAULT. The failure of Lessee or Lessor 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. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting Party must provide

prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting Party.

27. REMEDIES. Should the defaulting Party fail to cure a default under this Agreement, the non-defaulting Party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

28. ACKNOWLEDGEMENT OF NON-EXCLUSIVITY. Lessee hereby acknowledges and understands, that the KPB is the owner of adjacent and other lands in the same geographic region in which the lease premises operates in gravel materials markets. The existence of this lease in no way implies exclusive rights to produce and sell materials within the geographic region. The KPB may at its sole discretion develop, or offer to be developed, new material site locations that may act in direct competition with the materials produced through this lease.

29. LESSEE MORTGAGES.

(a) Lessor consents to the granting by Lessee of a lien and security interest (each, a Lessee Mortgage) in Lessee's interest in this Agreement and all of Lessee'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 develop and maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. Lessor agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance will be subordinate to Lessor's rights and interest in the Leased Premises and the Property. Any such encumbrance will be limited to the Lessee's interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in Lessor's title to or interest in the Leased Premises or the Property.

(b) Lessor acknowledges that nothing contained herein will be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender may 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 and any extensions and modifications thereof.

29. MISCELLANEOUS.

(a) 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.

(b) Non-waiver. Failure of a 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.

(c) Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Alaska, without regard to conflict of law principles. Any lawsuits filed in connection with this Agreement must be filed and prosecuted in the Third Judicial District, State of Alaska, at Kenai, Alaska.

(d) 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.

(e) Memorandum. A short-form Memorandum of Lease may be recorded at Lessor's or Lessee's option in the form as depicted in Exhibit 4, attached hereto. Lessor will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) W-9. As a condition precedent to payment, Lessor agrees to provide Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) Counterparts. This Agreement may be executed in counterpart, each of which when so executed and delivered will be considered an original and all of which when taken together will constitute one and the same instrument.

(h) Amendment. This Agreement may be amended in writing upon mutual agreement of the Parties.

(i) Entire Agreement. This Agreement and its 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.

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

LESSOR: Kenai Peninsula Borough
an Alaska municipal corporation

LESSEE: _____

By: _____
Peter A. Micciche, Borough Mayor

By: _____

Date: _____

Date: _____

ATTEST:

Michele Turner CMC, Borough Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Wayne Cary, Deputy Borough Attorney

Date: _____

APPENDIX A

LEASE PROVISIONS REQUIRED BY KPB 17.10

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

(2) **Assignment.** Lessee may assign the lands upon which it has an agreement only if approved by the KPB 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 KPB 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 (30) days after written notice of the default, KPB 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, if in good standing, 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 the Leased Premises by Lessee during the Term, KPB, its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premises. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** 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 the 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 the 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 Agreement. However, either party may designate in writing such other address to which such notice of 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 default will be in writing as provided in Paragraph 9 Notice.

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

(a) Improvements on Leased Premises owned by Lessee shall, within thirty (30) calendar days after the termination of the Agreement, be removed by Lessee; provided, such removal will not cause injury or damage to the land; and further provided, that the KPB 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 KPB 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 Lessee, be sold at public sale under the direction of the KPB 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 its successors in interest, after paying to KPB 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 KPB Mayor is authorized to bid, in the name of KPB, 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. KPB 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 KPB Mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, Lessee shall convey said improvements and/or chattels by appropriate instrument to KPB.

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

(13) **Re-rent.** In the event that the Agreement should be terminated, canceled, forfeited or abandoned, KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of KPB 17.10 or other applicable regulations.

(14) **Responsibility for Location.** It shall be the responsibility of 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 Lessee.

(16) **Sanitation.** 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, KPB 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 KPB 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 KPB 17.10 or of the terms of the Agreement may expose 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 KPB, 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 KPB to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB 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.

EXHIBIT 1

DESCRIPTION OF PROPERTY AND LEASED PREMISES

Page 1 of 1

The Property is legally described as follows:

N1/2 & SW1/4 of Section 15 and All of Sections 16-21, T4S, R11W, Seward Meridian, Alaska

Parcel Number: 18515046

The Leased Premises are described as follows:

The NE1/4 NW1/4 NW1/4, and the N1/2 NE1/4 NW1/4, and the N1/2 S1/2 NE1/4 NW1/4, and the NW1/4 NE1/4 lying west of the existing road, and the W1/2 NE1/4 NE1/4 lying west of the existing road, all within Section 16, T4S, R11W, Seward Meridian, Homer Recording District, Alaska containing 86.75 Acres, More or Less as shown on Exhibit 2 of the Lease.

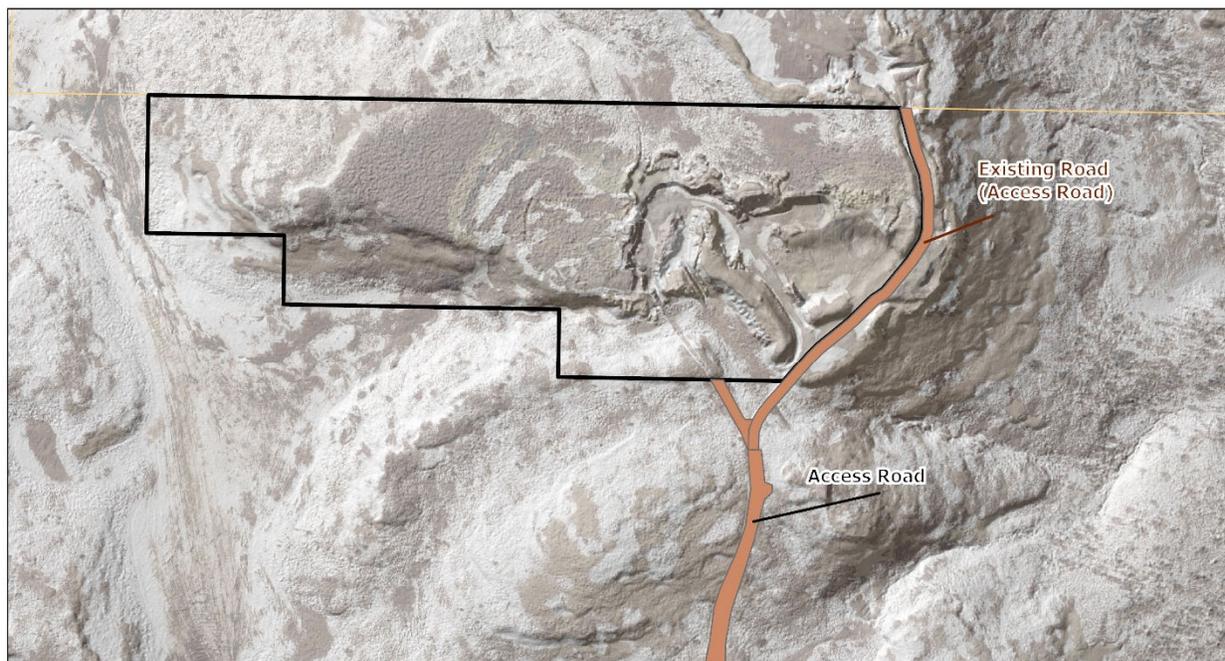
EXHIBIT 2

LEASED PREMISES

Page 1 of 2

The Leased Premises are depicted as follows:

Eagle Lake Materials Site Lease Premises



0 1,320 2,640 5,280 Feet

LEASE PREMISES: The NE1/4 NW1/4 NW1/4, and the N1/2 NE1/4 NW1/4, and the N1/2 S1/2 NE1/4 NW1/4, and the NW1/4 NE1/4 lying west of the existing road, and the W1/2 NE1/4 NE1/4 lying west of the existing road, all within Section 16, T4S, R11W, Seward Meridian, Homer Recording District, Alaska containing 86.75 Acres, More or Less as shown on this Exhibit



2022 Imagery on 2008 LIDAR Hillshade

EXHIBIT 2

LEASED PREMISES

Page 2 of 2

The Leased Premises are depicted as follows:

**EAGLE LAKE MATERIAL SITE LEASED PREMISES
AND ACCESS ROAD**

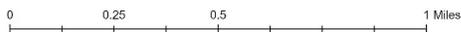
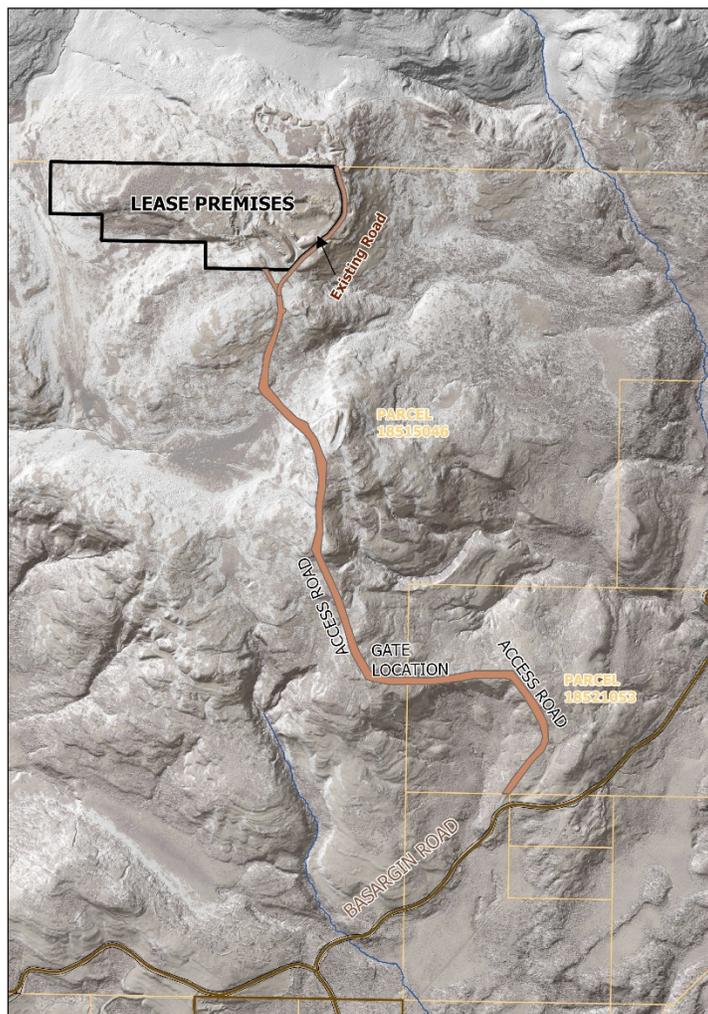


EXHIBIT 3

Material Site Mining and Reclamation Plan
(Approved upon Execution of Lease)

DRAFT

EXHIBIT 4

MEMORANDUM OF LEASE

(Attached)

DRAFT

(Above 2 Space for Recorder's Use Only)

Prepared by and Return to:

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

Lessor: Kenai Peninsula Borough
Lessee:
Legal Description: Attached as Exhibit 1
Tax Parcel ID: 18515046 (portion of)
Site Name: Eagle Lake Materials Site

State: Alaska
Borough: Kenai Peninsula Borough
Recording District: Homer, Third Judicial

MEMORANDUM OF LEASE

This Memorandum of Lease (Memorandum) is entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (the Lessor) and ___ (the Lessee) (together, the Parties).

1. Lessor and Lessee entered into a certain Material Site Lease Agreement (the Agreement) on the _____ day of _____, 20____, for the purpose of development, operations, maintenance and reclamation of a Sand and Gravel Material Site. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date with one (1) successive automatic five (5) year option to renew.
3. The portion of the land being leased to Lessee (the Leased Premises) is described in Exhibit 1 annexed hereto.
4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Lessee's lease of the Leased Premises.
5. This Memorandum is governed by the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LESSOR: Kenai Peninsula Borough
an Alaska municipal corporation

LESSEE: __
an __

By: _____
Peter A. Micciche, Borough Mayor

By: _____

Date: _____

Print Name: _____

ATTEST:

Its: _____

Date: _____

Michele Turner CMC, Borough Clerk

By: _____

Print Name: _____

Its: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Date: _____

Wayne Cary, Deputy Borough Attorney

Date: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND LEASED PREMISES

The Property is legally described as follows:

N1/2 & SW1/4 of Section 15 and All of Sections 16-21, T4S, R11W, Seward Meridian, Alaska

Parcel Number: 18515046

The Leased Premises are described as follows:

The NE1/4 NW1/4 NW1/4, and the N1/2 NE1/4 NW1/4, and the N1/2 S1/2 NE1/4 NW1/4, and the NW1/4 NE1/4 lying west of the existing road, and the W1/2 NE1/4 NE1/4 lying west of the existing road, all within Section 16, T4S, R11W, Seward Meridian, Homer Recording District, Alaska containing 86.75 Acres, More or Less as shown on Exhibit 2 of the Lease.