

E. NEW BUSINESS

- 1. Ordinance 2023-XX; Authorizing a negotiated lease with Davis Block & Concrete Company for concrete batch plant operations in support of the Sterling Highway MP 45-60 construction project near Cooper Landing.**

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, KPB Assembly

THRU: Peter A. Micciche, Mayor *PKM*
Robert Ruffner, Planning Director *RR*
Marcus A. Mueller, Land Management Officer *mam*

FROM: Aaron Hughes, Land Management Agent *AH*

DATE: February 15, 2024

RE: Ordinance 2024-____, Authorizing a Negotiated Lease with Davis Block and Concrete Company for Concrete Batch Plant Operations in Support of the Sterling Highway MP 45-60 Construction Project Near Cooper Landing (Mayor)

Davis Block and Concrete Company (“Davis Block”) has been selected as a subcontractor to provide specific materials and services necessary for the completion of the Sterling Highway MP 45-60 construction project near Cooper Landing. Davis Block has submitted an application for a negotiated lease for the expressed purpose of a batch plant facility in support of construction operations necessary for the completion of the Juneau Creek Bridge.

The lease will encompass approximately 1-acre of a larger KPB-owned parcel currently managed as a material and slash disposal site, commonly referred to as the Snug Harbor Materials Site. Leasing of the site will provide benefit to the KPB through generation of lease revenues, materials site management services, and improvements to the site resulting from the lease. Additional benefit to the community of Cooper Landing will be in the form of locally available concrete services during the term of the project.

The negotiated lease terms provide for an initial annual lease amount of \$3,500 for a 5-year term, to include a 3% annual escalation, with an option to terminate the lease early based on completion of the project or to extend the lease for 2 additional one-year terms.

Authorization of the lease in support of the Sterling Highway MP 45-60 Project will help to improve safe and efficient travel on the Sterling Highway for residents and visitors while generating addition lease revenues and other added values for the KPB.

Your consideration is appreciated.

Introduced by:	Mayor
Date:	02/27/2024
Hearing:	03/19/2024
Action:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2024-**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE WITH DAVIS BLOCK
AND CONCRETE COMPANY FOR CONCRETE BATCH PLANT OPERATIONS IN
SUPPORT OF THE STERLING HIGHWAY MP 45-60 CONSTRUCTION PROJECT
NEAR COOPER LANDING**

- WHEREAS,** Davis Block and Concrete Company has been selected as a subcontractor providing materials and services necessary to the completion of the Sterling Highway MP 45-60 construction project near Cooper Landing; and
- WHEREAS,** Davis Block and Concrete Company has submitted application for the negotiated lease of KPB-owned land, for concrete batch plant operations necessary for the construction of the Juneau Creek Bridge; and
- WHEREAS,** the KPB owns or manages other leased sites in support of the highway project, and as a result has relevant comparable lease pricing data used to determine the negotiated lease terms; and
- WHEREAS,** the site is approximately 1acre in size, and is located within an area owned by the KPB and actively managed as the Snug Harbor Materials Site; and
- WHEREAS,** the proposed site is classified as Light Industrial and Resource Management as provided in KPB Resolution 96-79; and
- WHEREAS,** additional concrete from the proposed batch plant operations will be made available for local, private sale during the term of the lease; and
- WHEREAS,** the leasing of the site will not interfere with the existing use of the Snug Harbor Materials site; and
- WHEREAS,** a site design concept and lease development agreement has been prepared for this proposal; and
- WHEREAS,** the KPB Planning Commission conducted a public hearing at its regularly scheduled meeting on February 26, 2024, and recommended _____;

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

SECTION 1. That the Assembly finds that leasing of the identified KPB land pursuant to KPB 17.10.100(I) is in the best interest of the KPB as the use is in support of the highway project by improving safe and efficient travel on the Sterling Highway for residents and guests, while generating lease revenue for the KPB, and providing site improvements through the lease development.

SECTION 2. That the existing KPB classification of Light Industrial and Resource Management is consistent with the authorized use.

SECTION 3. That the provisions of KPB 17.10.090 and 17.10.110 governing disposition, published notice and leasing of KPB lands will not apply to this lease to Davis Block, which is short-term and project driven.

SECTION 4. That the terms of the lease will be 5 years with 2, 1-year renewals with an initial annual lease amount of \$3,500.00 and an annual 3% escalation increase.

SECTION 5. That additional financial consideration related to the lease will be in the form of site development improvements and slash disposal site maintenance during the duration of the lease term.

SECTION 6. That based on the foregoing, the Mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease the 1-acre area referred to as Davis Block Lease Site, located within and being a portion of Tract A, ASLS 2010-17, Section 35, Township 5 North, Range 3 West, Seward Meridian Alaska. The authorization is for a lease solely to Davis Block and Concrete Company, and may not be assigned or subleased to any other person or entity without the expressed written consent of the Mayor.

SECTION 7. That the Mayor is authorized to execute a lease substantially similar in form to the lease agreement accompanying this Ordinance.

SECTION 8. That Davis Block and Concrete Company will have 120 days from the time of enactment of this ordinance to execute the lease.

SECTION 9. That revenue from the subject lease will be deposited in the Land Trust Fund.

SECTION 10. That this ordinance shall take effect immediately.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2024.**

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC Borough Clerk

Master Land Lease Development Agreement KPBL#

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (the "KPBL"); and Davis Block and Concrete Company, whose address is 36122 Ravenwood Street, Kenai, AK 99611 ("Davis Block") (together, the "Parties") enter into this Master Land Lease Development Agreement (the "Master Lease") and agree as follows:

I. Background; Contract Documents; Authorized Contact; Definitions

1. **Background.** The KPBL owns or manages certain real property located in the Kenai Peninsula Borough, in the state of Alaska. The Property is more particularly described in Section 5 and depicted in Attachment 3. For good and valuable consideration, the Parties agree that the Borough will grant Davis Block the right to use the Property for the purpose of temporary concrete batch plant operations in support of the State of Alaska MP 45-60 Project. Davis Block agrees that it will conduct its use and operations according to the terms and conditions contained in this Agreement for purposes integral to the Sterling Highway MP45-60 Project near Cooper Landing, Alaska. KPBL agrees that Davis Block may use the Property to conduct similar business operations outside the MP 45-60 project scope for the duration of the agreement.
2. **Authorized Contact.** All communications about this Agreement will be directed as follows. Any reliance on a communication with a person or entity other than those listed below is at the Party's own risk. KPBL staff do not have authority to bind the KPBL. Any material amendments or changes to the Agreement must be approved in writing signed by the KPBL Mayor and may be subject to appropriation and approval by the KPBL Assembly.

KPBL:

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

Davis Block:

Name: Davis Block and Concrete Company.
Attn: Scott Davis, President
36122 Ravenwood Street
Kenai, AK 99611

3. **Contract Documents.** As authorized by the KPBL Assembly, this Master Lease and incorporated attachments together form the entire agreement ("Agreement"). Collectively, the Agreement is the final and complete understanding of the Parties. The following agreements or attachments, are attached to, incorporated herein by reference, and together form the Agreement:
 - i. Master Lease
 - ii. Attachment 1: Lease Provisions Required by KPBL 17.10
 - iii. Attachment 2: Development Plan

4. Definitions.

- 4.1. Agreement – As set forth in Section 3, above.
- 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); U.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 Title 46.
- 4.4. Environmental Liability Baseline - A description, accepted by the KPB 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 Davis Block, nor assumed by Davis Block by reason of assignment.
- 4.5. Project – State of Alaska Sterling Highway MP45-60 Project.
- 4.6. Property – Site that will be leased by Davis Block as part of the Project more particularly described in Section 5 and shown on Attachment 3.
- 4.7. Site Development Materials - Materials used for site development, including geotextile, fill, gravel, paving, and pavement reinforcement materials, water well development and casing and electric utility.

II. Leased Property Description; Term; Rent

5. **The Property.** The KPB agrees to lease to Davis Block, and Davis Block agrees to lease from the KPB, the Property in “as-is” condition. The KPB makes no specific warranties, express or implied, concerning the title or condition 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. The Property is more particularly described as:

Section 35, Township 5N, Range 3 West

An approximate 1 acre tract being located in and a portion of Tract A, ASLS 2010-17, Seward Meridian, and as further described and depicted in Attachment 3.

6. **Additional Lands.** By mutual written agreement of the Parties, the Property may be added to, amended, or otherwise changed to fit the needs of the Project. This provision will be interpreted to mean that the KPB and Davis Block may agree to add additional lands owned

or managed by the KPB to the Agreement and Davis Block may agree to lease such additional lands under the same rental and fees basis, subject to the terms and conditions set forth in this Agreement and to KPB Assembly approval.

7. Term.

- 7.1. Initial Term. The Initial Term of this Agreement will be for a period of five years commencing on _____ and terminating on _____.
- 7.2. Renewal Term(s). Unless notice of non-renewal is provided prior to expiration of the Initial Term or Davis Block is otherwise in breach of the Agreement, the Agreement may be automatically renewed by Davis Block for two additional 1-year Renewal Terms.
- 7.3. Early Termination. With 90 day written notice to the KPB, Davis Block may request early termination of the Agreement only in the event that Davis Block's involvement in the project has been completed.

8. Rent.

- 8.1. Surface Use Rent ("Rent"). The Rent for the use of the surface area of the Property is \$3,500.00 plus applicable sales taxes as may otherwise be required by law, for the first year of the Agreement, payable on the commencement date of the lease and each anniversary thereof. The Rent will increase annually at 3% per annum.
- 8.2. Services in lieu of rent. In addition to the rental consideration referred to in Section 8.1, Davis Block agrees to conduct onsite maintenance of the slash disposal site as deemed necessary (with the exception of burning) during the term of the Agreement. Details of these services are as defined in Exhibit _____.
- 8.3. Material Extraction and Disposal. As a condition of the lease, Davis Block may mine up to 1,000 yards of on-site material to be used solely for development of the Property. All mining activity for said authorized materials must take place in areas approved by the KPB in writing and in a manner that complies with all applicable laws, ordinances, regulations and materials site development plans.
- 8.4. Except as provide in Section 8.3, no material extraction or disposal provisions are incorporated as a part of this Agreement.

III. Uses; Reservation of Rights by KPB

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

- 9.1. Subject to Section 11 below, Davis Block will have exclusive surface use and possession of the leased Property. The surface uses will be governed by this Master Lease. Surface uses include the staging of personnel and temporary concrete batch plant operations, and related uses as reasonably necessary.

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

- 10.1. Installing permanent structures;

- 10.2. Storage of bulk fuel. Bulk fuel is defined as storage of 500 gallons or more fuel.
- 10.3. Storage or maintenance of heavy equipment or construction materials outside of those provided for in the development plan and as otherwise agreed to by the KPB.
- 10.4. Material extraction or deposit not otherwise allowed in the Agreement.
- 10.5. Any use that may restrict or otherwise inhibit continued use of the site for existing material extraction and slash disposal.
- 10.6. All other uses not specifically in support of the identified intended use.

11. Rights Reserved by KPB.

- 11.1 The KPB reserves and retains the right to grant additional easements for utility and public access purposes across the Property and nothing herein contained may prevent the KPB from specifically reserving or granting such additional easements and rights-of-way across the Property as may be deemed reasonable and necessary.

As the Parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that the KPB grants future additional easements or rights-of-way across the Property, it is agreed and understood that Davis Block will receive no damages for such grant.

- 11.2 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 Davis Block to minimize interference with Davis Block's operations and activities on the Property.

IV. Cancellation, Expiration or Other Termination

12. Davis Block Default.

- 12.1. If Davis Block 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 Davis Block a written notice of the violation. The notice must allow Davis Block not less than sixty (60) days to correct the violation, unless the violation constitutes an imminent threat to public health or safety.
- 12.2. If Davis Block does not correct the violation by the time set forth in the notice, the KPB will:
 - a. Grant an extension of time to correct the violation if Davis Block shows good cause;
 - b. Take enforcement action as provided under this Agreement or as available by law; or
 - c. Cancel the Agreement.
- 12.3. If the KPB determines that a violation creates an imminent threat to public health or safety, the KPB will:
 - a. Direct Davis Block to stop the activity immediately;
 - b. Provide Davis Block less time than otherwise specified in the Agreement to correct the violation; or
 - c. Correct the violation at Davis Block's expense.

- 12.4. Without limitation, the following will be deemed either violations of material obligations of this Agreement or material deviations from the requirements of the Agreement:
- a. Davis Block fails to pay when due any rent, charge, or fee or royalty specified in the Agreement, including any increase made under the Agreement;
 - b. Davis Block blocks or restricts the KPB or its Contractors access to the Property in violation of Section 11 above; or
 - c. Davis Block is otherwise found to be in violation of local, state or federal law.

13. Waiver.

- 13.1. A waiver by the KPB of any default by Davis Block 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 Davis Block 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 by the KPB.
- 13.2. The KPB's failure to insist upon the strict performance by Davis Block of any provision in this Agreement is not a waiver or relinquishment for the future, and the provision will continue in full force.

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

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

16. 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 the Agreement is impossible, the Agreement may be terminated. If Davis Block 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.

17. 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 the Agreement as a result of the national emergency.

18. Survival.

- 18.1. Upon expiration, cancellation, or other termination of this Lease, Davis Block must peaceably and quietly vacate the Property and return possession to the KPB.
- 18.2. Davis Block's obligations under the following provisions of the Agreement will survive and remain binding on Davis Block after the expiration, cancellation, or other termination of the Agreement:
- a. Section 8 – Rent; Notwithstanding this provision, rent will not apply if expiration is

at the end of the term of the Agreement or if the Agreement is terminated for reasons set forth in Sections 16 or 17 above.

- b. Section 14 – Disposition of Improvements and Personal Property; and
- c. Sections 19 through 24 of Chapter V, Environmental Issues.

V. ENVIRONMENTAL ISSUES

19. Environmental Liability Baseline.

- 19.1. Responsibility for Ascertaining Environmental Condition of Property. Davis Block has the sole responsibility under the 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, Davis Block is responsible for following all restrictions set by ADEC including, but not limited to, notifying any assignee of the Agreement in writing of ADEC's restrictions.
- 19.2. Financial Responsibility for Contamination on the Property and on any Affected Property. Davis Block assumes financial responsibility to the KPB 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 Davis Block's right to seek contribution or indemnity from either prior lessees of the Property, or other potentially responsible parties except for the KPB.
- 19.3. Establishing an Environmental Liability Baseline
 - a. If Davis Block wants to establish an Environmental Liability Baseline for any or all portions of the Property, Davis Block must provide the KPB with an Environmental Assessment for that portion of the Property prior to its use.
 - b. If Davis Block 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, Davis Block must demonstrate by reasonable evidence to the satisfaction of the KPB that the contamination proposed for inclusion was not caused or materially contributed to by Davis Block or Davis Block's operations or activities nor assumed by Davis Block. Contamination caused or materially contributed to by activities of Davis Block's sublessees, contractors, and guests on the Property are deemed to have been materially contributed to by Davis Block.
 - c. Only that portion of contamination not caused or materially contributed to by Davis Block or Davis Block's operations or activities will be included in the Environmental Liability Baseline.
- 19.4. Adding to an Existing Environmental Liability Baseline
 - a. If, after an Environmental Liability Baseline is established for any portion of the Property, Davis Block discovers contamination in, on, or under the surface of that portion of the Property having an Environmental Liability Baseline, which contamination Davis Block or Davis Block's operations or activities did not

cause, or to which Davis Block or Davis Block's operations did not materially contribute, and which Davis Block did not assume by reason of assignment, Davis Block may, at its own cost, submit an additional Environmental Assessment reflecting that information to the KPB for the KPB's consideration to add to the Environmental Liability Baseline. Davis Block's additional Environmental Assessment must demonstrate by reasonable evidence to the satisfaction of the KPB which portion of the additional contamination on the Property was not caused by Davis Block or Davis Block's activities, or to which Davis Block or Davis Block's activities did not materially contribute.

- b. Only that portion of contamination not caused by Davis Block or Davis Block's operations, or to which Davis Block or Davis Block's operations did not materially contribute, may be added to the existing Environmental Liability Baseline.

19.5. The KPB's Acceptance or Rejection of Davis Block's Environmental Assessment.

When the KPB receives Davis Block's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environment Liability Baseline, the KPB, in its sole discretion, may do one of the following:

- a. Perform additional environmental testing at Davis Block's expense to verify the environmental condition of that portion of the Property being assessed. If the results of the KPB's tests conflict with Davis Block's Environmental Assessment, the KPB and Davis Block 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 Davis Block'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 Davis Block's Environmental Assessment for that portion of the Property being assessed and offer Davis Block the opportunity to perform additional environmental testing if the KPB 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 KPB's written rejection of the Davis Block's Environmental Assessment will be based on failure of Davis Block'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 Davis Block or Davis Block's operations, or to which Davis Block or Davis Block's operations did not materially contribute.

19.6. Amending the Environmental Liability Baseline to Delete Contamination Caused or Assumed by Davis Block, or to which Davis Block 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 Davis

Block or Davis Block's operations, or to which Davis Block or Davis Block's operations materially contributed, the Environmental Liability Baseline may be amended to delete that portion of the Contamination that was caused by Davis Block or Davis Block's operations, or to which Davis Block or Davis Block's operations materially contributed.

- b. The KPB will have the burden of proof to establish that Davis Block or Davis Block'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 Davis Block or that Davis Block or Davis Block's operations materially contributed to the contamination, the Parties will agree upon an amendment to the Environmental Liability Baseline within a reasonable time.

20. Release of Lessee. The KPB releases Davis Block from liability to the KPB for contamination identified by the Environmental Liability Baseline that was not caused by Davis Block or Davis Block's operations, or to which Davis Block or Davis Block's operations did not materially contribute.

21. Required Remediation. The KPB is under no obligation to remediate contamination identified in an Environmental Assessment, except the KPB must remediate, or have responsible parties remediate, the contamination identified in the Environmental Liability Baseline if an agency with such authority requires the KPB to remediate. In the event of such required remediation, the KPB will make a reasonable effort to coordinate the remediation with Davis Block to minimize disruption of Davis Block's operations or activities and damage to Davis Block's improvements and property. Davis Block releases and holds the KPB harmless for all costs associated with any damage to, and relocation, removal, and repair of Davis Block's improvements and property resulting from remediation performed in compliance with this Section with respect to contamination that existed before construction of affected improvements.

22. Action Against Potentially Responsible Parties. This Section restricts neither the KPB nor Davis Block 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

23. Defense and Indemnification. Davis Block agrees to defend, indemnify, and hold harmless the KPB, its employees, public officials, and volunteers, with respect to any action, claim or lawsuit to the extent cause by (1) a breach of this Agreement or (2) the use and occupancy of the Property by Davis Block. 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. Davis Block's obligations arise immediately upon notice to the KPB of any action, claim, or lawsuit. The KPB will notify Davis Block in a timely manner of the need for indemnification but such notice is not a condition precedent to Davis Block's obligation and may be waived

where Davis Block has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against the KPB to the extent caused by Davis Block's use and occupancy of the Property. Notwithstanding the foregoing, Davis Block's duty to indemnify, defend, and hold harmless the KPB as set forth above will not apply to the extent a claim arises from the negligence or willful misconduct of the KPB, its employees, public officials, and volunteers.

24. Insurance coverage required under this Agreement must be primary and exclusive of any other insurance carried by the KPB. Minimum levels of insurance coverage required under this Agreement must remain in effect for the life of this Agreement. If Davis Block's policies contain higher limits, the KPB will be entitled to coverage to the extent of such higher limits. Certificates of Insurance will be delivered to the KPB at the time of submission of the signed Agreement. The KPB may request copies of required policies and endorsements, which must be provided within ten calendar days of the KPB's request.

24.1. Commercial General Liability Insurance (CGL). Davis Block 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 CGL policy's limits may be layered with an umbrella or excess liability policy. This policy must name the KPB as additional insured with a waiver of subrogation.

24.2. Commercial Auto Liability. Davis Blok must provide and maintain commercial auto liability insurance. The commercial auto 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 the KPB as additional insured with a waiver of subrogation.

25. Workers' Compensation. Davis Block 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.

26. Subleasing. Davis Block may not sublease the Property nor any part thereof without written permission of the KPB Mayor when applicable. A sublease must be in writing and subject to the terms and conditions of the Agreement.

27. Waste. Davis Block must not commit waste upon or injury to the Property.

28. Fire Protection. Davis Block must 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.

29. Safety. Davis Block will 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 Davis Block's use of the Property. Davis Block is responsible for the safety of all persons conducting activities on the Property under the Agreement.

- 30. Sanitation.** Davis Block must comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The Property must be kept in a clean and sanitary condition and every effort must be made to prevent pollution of the waters and lands. Sanitary facilities must be in accordance with ADEC regulations.
- 31. Compliance with Laws.** Davis Block must abide by all applicable federal, state, city, and KPB statutes, ordinances, rules, and regulations. Davis Block is responsible for obtaining all federal, state, and local permits applicable to Davis Blocks activities and must keep such permits in good standing. Davis Block understands the materials site is subject to an existing SWPP specific to the established use at the site. Davis Block will need to investigate and enter into an individual SWPP for their expanded use. Any SWPP violations matters resulting from the expanded use by Davis Block, will be remedied by Davis Block in prompt and complete manner.
- 32. Responsibility of Location.** It will be Davis Block's responsibility to properly locate itself and its improvements on the Property.
- 33. Liens and Mortgages.** Davis Block will not cause nor 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, Davis Block will immediately cause the lien to be released.
- 34. No Warranty, Express or Implied.** Davis Block accepts the Property AS-IS, WHERE-IS. The Agreement will 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 Davis Block's responsibility to satisfy itself prior to executing the Master Lease as to the type, condition, and quality of the Property.
- 35. Jurisdiction.** Any lawsuits filed in connection with the terms and conditions of the Agreement, and of the rights and duties of the parties must be filed and prosecuted at Kenai, Alaska and will be governed by Alaska law, without regard to conflict of law principles.
- 36. Savings Clause.** Should any provision of the Agreement fail or be declared null or void in any respect, or otherwise unenforceable, it will not affect the validity of any other provision of the Agreement nor constitute any cause of action in favor of either Party as against the other.
- 37. Binding Effect.** It is agreed that all covenants, terms, and conditions of the Agreement will be binding upon the successors, heirs and assigns of the Parties hereto.
- 38. 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.

39. Warranty of Authority. Davis Block warrants that the person executing the Agreement is authorized to do so on Davis Block's behalf.

40. Counterparts. The 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.

41. Taxes. Lessee will be responsible for all KPB tax obligations which may be assessed to the leased premises, improvements and / or related activities.

42. Quiet Enjoyment. During the term of the Agreement, Davis Block will have quiet enjoyment of the Property subject to the terms and conditions stated in the Agreement.

43. 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.

44.

LESSOR: Kenai Peninsula Borough

LESSEE: Davis Block and Concrete Company

By: Peter A. Micciche
Its: Mayor
Date: _____

By: Scott Davis
Its: President
Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Michele Turner, CMC
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

KPB NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Peter A. Micciche, known to me to be the Mayor, 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: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2024, 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 _____, of Davis Block and Concrete Company, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and who is authorized by said State of Alaska 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
My Commission Expires: _____

ATTACHMENT 1
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.** Lease may assign the lands upon which he 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 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 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 the default will be in writing as provided in paragraph 10 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 his 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 KPB 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.



January 15, 2024

To: Aaron Hughes, Kenai Peninsula Borough

From: Scott Davis, President
Davis Block Co., Inc.

RE: Land Lease in Cooper Landing

Enclosed is the site plan for the property lease on Snug Harbor Road. Below is our proposed schedule and list of onsite equipment:

April/May (as weather allows)

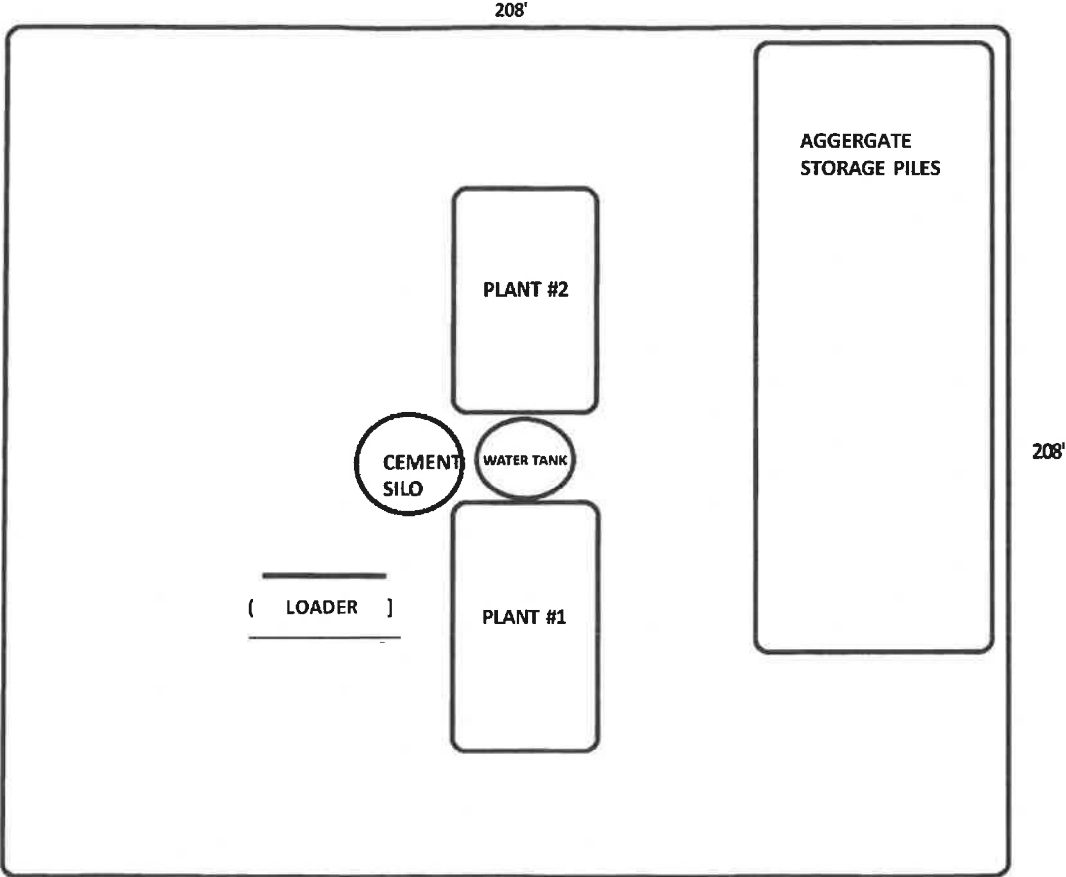
1. Mine gravel from adjacent KPB property, deliver and cap proposed site with 6"-12" of gravel to make site suitable/stable for equipment.
2. Drill water well, install pump. Plumb to water storage tanks.
3. Deliver plants and equipment to site. Set up plants
4. NRMCA certification of plants.
5. Test plants for late June production. (May/June)

Onsite Equipment/inventory:

- 2 each portable RMX batch plants. One primary plant w/cement silo.
- 1 loader fulltime - additional loader may be added on occasion.
- 1 each primary generator, critical pours may have additional generator.
- 1 each water storage tank.
- 1-2 cement bulkers for cement delivery
- Up to 1,000 yards concrete aggregate.
- 2-3 totes of concrete chemicals (non-hazard/water soluble.
- 1 each 20' tool Conex.

No fuel storage onsite.

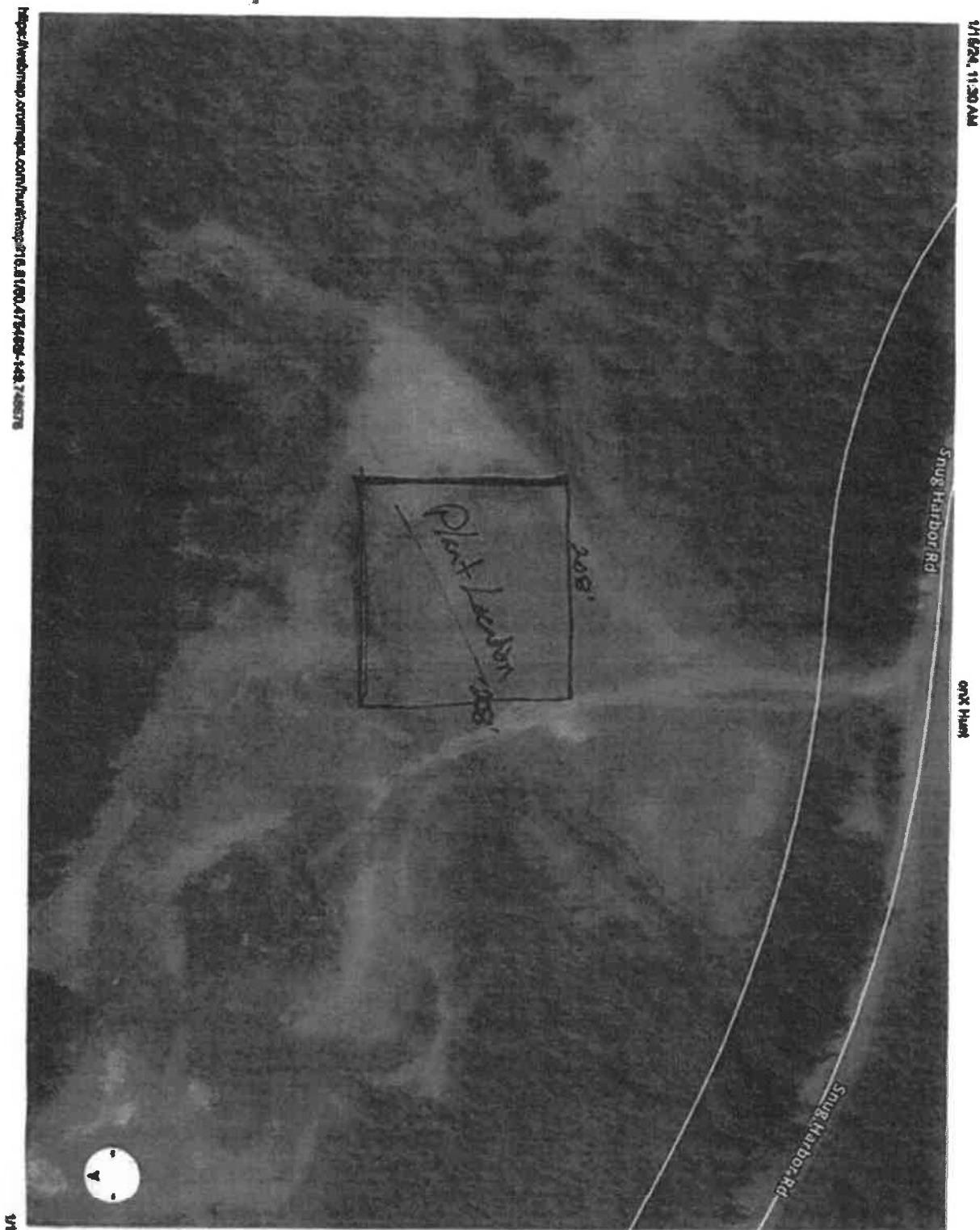
Attachment 2



Attachment 2

From: Scan scan@davisblock.com
Subject: Message from KM_C227
Date: January 15, 2024 at 12:23 PM
To: sdavis@davisblock.com

S





Davis Block Lease Site

Kenai Peninsula Borough

Attention: Aaron Hughes

Davis Block Company wishes to lease 1 acre of property from KPB in an existing gravel pit/dump site for the period of 4 years. The usage of the land will be to set up a portable concrete batch plant for concrete supply to the Juneau Creek bridge for the Cooper Landing bypass project as well as service the Cooper Landing area with concrete.

- 1) We intend to have a well drilled for water supply for concrete. Value \$10,000.
- 2) We will generate our own power.
- 3) Schedule is to start lease late in 2023 or first quarter 2024 until 2028.
- 4) With KPB approval a gravel cap will be installed over the intended usage area to cover unsuitable ground conditions. Gravel will be mined from KPB source near where leased land is at no charge. Value unknown.
- 5) One mobile batch plant 10'x 50'x 12', one generator, one 20' conex/batch office, 2 each 8'x8'x 30' tall cement silos, 2-4 ea. concrete trucks, 1 ea 3 yard loader, up to 1,000 cubic yards of aggregate will be stored on the property.



Scott Davis
President
Davis Block and Concrete

APPLICATION FOR LEASE OF BOROUGH LAND
KENAI PENINSULA BOROUGH
LAND MANAGEMENT DIVISION

144 N. Binkley Street
Soldotna, AK 99669-7599
lmweb@kpb.us

Phone: 907-714-2205
Fax: 907-714-2378

A \$500.00 fee must be submitted with this application. The application fee is not applied to the lease and is refunded only if the application is not found to be in the public's best interest.

This form is to be completed by individuals or organizations wishing to lease borough land pursuant to KPB 17.10.100(I). The application is to be completed in full to the best of knowledge of the individual or authorized representative. If requested, proprietary and financial information of the applicants, that is so marked, will be kept confidential. The assembly must approve, by ordinance, any disposition of borough land. The application process generally takes between 90-180 days.

Attach separate sheets of paper if more space is needed for explanation. If a section (or portion thereof) is not applicable, mark with the abbreviation "N/A". **Please type or print.**

APPLICANT INFORMATION (add additional pages if necessary)

Name(s): Scott Davis
Organization (if applicable): Davis Block Co., Inc.
Mailing Address: 36122 Ravenwood St. Kenai, AK 99611
Phone: 907-335-3805 Email: sdavis@davisblock.com
907-398-1597

APPLICANT TYPE (check one)

<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> General Partnership
<input type="checkbox"/> Non-Profit	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Partnership
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Government	<input type="checkbox"/> Other: _____

LEASE TERM: ☒ Short Term (up to five years) # of Months/Years: 4 yrs
☐ Long Term (greater than five years) # of Months/Years: _____

PURPOSE OF LEASE: ☐ Agriculture ☐ Grazing
☒ Other (briefly describe): to set up concrete
plant for construction on Junau Bridge.

PARCEL(S) OF INTEREST (add additional pages if needed)

Legal Description(s): 119 120 28

Plat Number(s) (if applicable): _____ Recording District(s): _____

Tax Parcel ID(s): 119 120 28 Size/Acreage(s): 2 acres

Are there any existing improvements on this land?

☒ No ☐ Yes. If yes, please describe and attach photos if available

Has the applicant or affiliated entity previously leased Borough land or resources?

☒ No ☐ Yes. If yes provide legal description(s); type of lease and its' current status

If the proposal is for other than fair market value, please state why it would be in the public's best interest to approve this proposal. Include all supporting facts & documents.

Has the applicant or affiliated entity ever filed a petition for bankruptcy, been adjudged bankruptor, or made an assignment for the benefit of a creditor?

☒ No ☐ Yes (If yes please explain, including dates)

Is the applicant or affiliated entity now in default on any obligation to, or subject to any unsatisfied judgment or liens?

☒ No ☐ Yes (If yes, please explain)

REQUEST PLAN REVIEW MEETING. Applicant requests a meeting with Land Management staff to review lease proposal and process. ☐ No ☒ Yes

Note: Submit, as applicable, the following items with this application:

1. Current Alaska Business License
2. Designation of Signatory Authority to Act for Organization or Individual
3. Non-Profits – IRS Tax Exemption Status
 - ☐ Yes – Please attach letter of determination
 - ☐ No – Please attach certificate, articles of incorporation, by-laws, or other appropriated documentation.
4. Site Plan Depicting the Proposed Use of the Property
5. Development Plan Explaining the proposed:
 - ☐ Use
 - ☐ Nature of improvements
 - ☐ Estimated value of improvements
 - ☐ Development and construction timetable
6. Tax Compliance Certification Form.

Complete the following applicant qualification statement for each individual applicant or organization (attach additional statements as necessary).

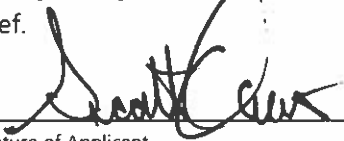
APPLICANT QUALIFICATION STATEMENT

Name: Scott Davis Title (if applicable): President/owner
 Address: 36122 Ravenwood St Kenai, AK 99611

I hereby swear and affirm to the best of my knowledge:

- That I am eighteen years of age or older; and
- I am a citizen of the United States or a permanent resident who has filed a declaration of intention to become a citizen or a representative of a group, association or corporation which is authorized to conduct business under the laws of Alaska; and
- I am not delinquent on any deposit or payment obligation to the Kenai Peninsula Borough (KPB); and
- I am not currently in breach or default on any contract or lease involving land in which KPB has not acted to terminate the contract or lease or to initiate legal action.
- Unless agreed otherwise in writing and signed by the KPB mayor, the above named applicant agrees to provide a performance bond, general liability insurance, damage deposit, and pay for remote site inspection, if applicable.

I hereby certify that the information contained herein is true to the best of my knowledge and belief.


 Signature of Applicant

7/11/23
 Date

Scott E. Davis
 Print Name