GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into effective _______, 2019 (the "Effective Date"), by and between the MATANUSKA-SUSITNA BOROUGH, a municipal corporation organized under the laws of the State of Alaska ("Lessor"), and ____________________ ("Lessee"). Lessor and Lessee are referred to in this Lease individually as a "Party" and collectively as the "Parties."

RECITALS

A. Lessor is the owner of the Premises described in Section 1 of this Lease.

B. Lessor has entered into a Design, Build, Operate and Finance Agreement, effective ________ with Lessee and the Matanuska-Susitna Borough (the "DBOF Agreement") for the construction and operation of a waste to energy facility.

C. Lessor desires to lease the Property to Lessee and Lessee desires to lease the Property from Lessor for the purposes and upon the terms and conditions set forth in this Lease.

Therefore, for good and valuable consideration, including the mutual agreements set forth in this Lease, the Parties agree as follows:

1. Premises.

   Lessor is the owner of real property legally described as ____________________, in the Palmer Recording District, Third Judicial District, State of Alaska (the "Premises").

2. Lease of Premises.

   Lessor leases the Premises to Lessee and Lessee leases the Premises from Lessor for the purposes of constructing and operating a waste to energy facility upon the Premises, pursuant to and in accordance with the DBOF Agreement. The facility is referred to as the ____________________ and is referred to in this Lease as the "Facility." Lessor retains the right to designate or grant rights-of-way or utility easements across the Premise without compensation to Lessee to the extent such rights-of-way or utility easements do not unreasonably interfere with the use of the Premises or the Facility by Lessee to provide water and wastewater utility services and except Lessee shall be compensated for the taking or destruction of any improvements on the Premises owned by Lessee resulting from the designation, grant or use of any such rights-of-way or utility easements.

3. Lease Term.

   (a) Initial Term. The term of this Lease shall commence on the Effective Date and shall continue in effect until _____ (____) years from the Commencement of Operations Date as defined in the DBOF Agreement, unless earlier terminated as provided in this Lease or in
the DBOF Agreement. "Lease Year" means the one year period commencing January 1 and ending the following December 31 in each year during the term of this Lease, except the first year which shall commence on the Effective Date and end the next December 31, and the last year, which shall commence on January 1 and end on the anniversary of the Commencement of Operations Date immediately following said January 1.

(b) **Renewal of Lease.** Following the initial term, this Lease shall remain in effect on a year-to-year basis unless terminated by either party with a one hundred eighty (180) day written notice to the other party, subject to the following:

1. The renewal term(s) shall be subject to all of the terms and conditions contained in this Lease.
2. Each renewal shall be treated as a new lease and shall be subject to all provisions of the Matanuska-Susitna Borough Code then in effect, including condition that the renewal be approved by the Borough Assembly.
3. The term of this lease shall not renew if Lessee is in default of any of its obligations under this Lease.

(c) As used in this Lease, the expression "term of this Lease" refers to the initial term and to any renewal of this Lease.

4. **Rent.**

(a) **Rent.** Subject to adjustment as provided below, the rent for the Premises shall be **TEN DOLLARS ($10.00)** annually, payable in advance commencing upon the Effective Date and on the first day of each Lease Year thereafter, including during any renewal term. Rent for any partial year period shall be pro-rated based on a 365 day year.

(b) **Adjustment.** The rental to be paid by Lessee under this Agreement shall be subject to adjustment as follows:

1. **Period for rental adjustment.** Lessor may require an adjustment in the amount of the rental for each five (5)-year period commencing January 1, 20___ to the fair rental value of the Premises for the highest and best use of the Premises, in each case by giving written notice to Lessee at least ninety (90) days prior to the commencement of each five (5)-year period commencing January 1, 20__, including during year-to-year renewals of this Lease pursuant to Section 3(b) of this Lease. The fair rental value shall be determined by a competent and disinterested appraiser selected by Lessor and paid for by Lessee.

2. **Appraisal in event of dispute.** In the event that Lessor or Lessee dispute the appraisal obtained under Section 3(b)(1) within thirty (30) days after receipt of the appraisal, then the rental for the period in question shall be determined by majority vote of three competent and disinterested appraisers, one of whom shall be selected and paid for by Lessor and one selected and paid for by Lessee. The two appraisers so selected shall select a third appraiser, the expense to be born equally by Lessor and Lessee. The three appraisers so selected shall determine by majority vote the rental to be paid by Lessee during the ensuing period. In the event that either Lessor or Lessee shall fail to appoint an appraiser within ten (10) days after the expiration of the aforementioned thirty (30) days, or in the event the first two appraisers shall fail to select a third appraiser within ten (10) days after they have been selected, then the appraiser in question shall be appointed by the presiding judge of the Superior Court for the Third Judicial District, State of Alaska, at Palmer, on request of either party or of either of the first two appraisers, as the case may be.
(3) **Task of appraiser.** The appraisers shall be instructed that they are to determine the fair rental value of the Premises under and pursuant to this Lease for the highest and best use of the Premises at such time, without regard to any improvements on the Premises or the use then being made of the Premises by Lessee. The appraisal shall be in writing and copies of it shall be given to Lessor and Lessee prior to the commencement of the period in question. In no event shall the appraised rental value be less than the rental then being paid by Lessee. The amount so determined by appraisal shall be the rental for the remainder of the term of the option period or until further adjustment as provided above.

(c) **Net Lease.** This is an absolute triple net lease, and Lessor shall not be required to provide any services or do any act with respect to the Premises except as may be specifically provided in this Lease. The rent reserved herein shall be paid to Lessor without any claim on the part of Lessee for diminution, setoff, or abatement, and nothing shall suspend, abate, or reduce any rent to be paid hereunder, except as specifically provided in this Lease.

5. **Taxes, Assessments, and Charges Treated as Additional Rent.**

(a) Lessee agrees to pay promptly to the public authorities charged with collection thereof, as the same become due and payable, all taxes, assessments (general and special), permit, inspection and license fees, and other public charges, whether of a like or different nature, levied upon or assessed against the Premises and any buildings, structures, fixtures, or improvements hereafter located thereon or arising with respect to Lessee's occupancy, use, or possession of the Premises. Said charges include but are not limited to municipal sales taxes, real property taxes, and personal property taxes, if any, and that are assessed to and/or become payable to Lessor by Lessee during the term of this Lease and any extension thereof. Nothing herein shall be construed, however, as prohibiting Lessee from exercising all rights of law or contract to contest or protest any such charges or taxation, such as may exist for instance by way of exemption or dispute of assessment.

(b) Lessee agrees to provide to Lessor, within a reasonable time after demand, receipts evidencing Lessee's payment of all such taxes, assessments, and public charges due from Lessee under Section 5(a), above.

(c) Failure to pay these charges in a timely fashion to the appropriate authority is equivalent to the non-payment of rent.

(d) If Lessee shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge agreed in this Section to be paid by Lessee, Lessee shall be permitted to do so, and, if allowed by applicable law, to defer payment of such tax or charge, the validity or amount of which Lessee is so contesting, until final determination of the contest, on giving to Lessor written notice thereof prior to the commencement of any such contest, which shall be at least ten (10) days prior to delinquency, and on protecting Lessor on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate, or governmental charge, and from any costs, liability, or damage arising out of any such contest.

(e) Specifically and without in any way limiting the generality of the provisions of Section 5(a), Lessee shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which all such assessments or levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, Lessee may elect either mode of payment and its election shall be binding on Lessor. If, by making any
such election to pay in installments, any of such installments shall be payable after the
termination of this Lease or any extended term of this Lease, the unpaid installments shall be
prorated as of the date of termination, and amounts payable after that date shall be paid by
Lessor. All of the taxes and charges under this Section shall be prorated at the commencement
and expiration of the term of this Lease.

6. **Utility Service.**

Lessee shall furnish electricity, natural gas, garbage, sewer and water, and all other
utility services to the Premises during the term of this Lease and any renewal thereof. In no
event shall Lessor be liable for any loss or damage caused by any variation, interruption, or
failure of such services. No temporary interruption or failure of such services incident to the
making of repairs, alterations, or improvements, or due to accident or strike, or conditions or
events beyond Lessor’s reasonable control shall be deemed an eviction of Lessee or relieve
Lessee of any of its obligations hereunder. Lessee shall pay for all utility service.

7. **Contingencies; Conditions.** Unless otherwise agreed in writing:

(a) **Assembly Approval.** This Lease shall have no binding effect until the terms
of this Lease are approved by the Matanuska-Susitna Borough Assembly. Renewal of the
term of this Lease, pursuant to exercise of Lessee’s option under Section 3(b) of this Lease,
shall not be effective unless and until approved by the Borough Assembly, in its sole
discretion. In the event the Borough Assembly does not approve renewal of the term of this
Lease, this Lease shall terminate upon the expiration of the initial term despite Lessee’s
exercise of the option under Section 3(b) of this Lease.

(b) **Design, Build, Operate and Finance Agreement.** This Lease is contingent
and conditioned upon Lessee performing all of its obligations under the DBOF Agreement and
upon the continued effectiveness of the DBOF Agreement. If the DBOF Agreement is
terminated for any reason, this Lease shall automatically terminate effective upon the
termination of the DBOF Agreement. Termination of this Lease pursuant to this Section shall
not constitute a breach or an event of default by Lessor.

8. **Covenant of Quiet Enjoyment.**

Lessor covenants that Lessor is seized of the Premises in fee simple and has full right to
make and enter into this Lease and that Lessee shall have quiet and peaceable possession of the
Premises during the term of this Lease.

9. **Use of Premises.**

Lessee shall at all times use and manage the Premises to construct and operate the
Facility, including to expand the Facility, and to _______________. Lessee shall
not use or permit the Premises or any part of the Premises to be used for any other purpose or
for any unlawful purpose. Lessee may not use the Premises for any purpose that interferes with
Lessee’s obligations under the DBOF Agreement

10. **Compliance with Laws.**

(a) During the term of this Lease, Lessee shall comply with all applicable laws
affecting the Premises.

(b) Lessee shall not commit, or suffer to be committed, any waste or nuisance on
the Premises.
11. Abandonment.

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Premises, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor, except such property as may be encumbered to Lessor.

12. Lessor's Entry Upon Premises.

Lessee shall permit Lessor and the agents and employees of Lessor to enter upon and into the Premises and the Facility at all reasonable times for the purpose of inspecting the Premises and the Facility, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupancy or quiet enjoyment of the Premises occasioned by the entry, so long as that right is exercised in a manner that does not unreasonably interfere with the Lessee in the conduct of its business on the Premises.

13. Encumbrance of Leasehold Interest and Improvements.

(a) Lessee may encumber by mortgage or deed of trust (collectively "Encumbrance") its leasehold interest in the Premises, together with all improvements thereon, as security for any indebtedness of Lessee. The execution of any Encumbrance, or the foreclosure of any Encumbrance or the sale, either by judicial proceedings or by virtue of any power reserved in an Encumbrance of by conveyance by Lessee to the holder of the indebtedness, or the exercise of any right, power, or privilege reserved in any Encumbrance shall not be held as a violation of any of the terms or conditions of this Lease, or as an assumption by the holder of the indebtedness personally of the obligations of this Lease. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability under this Lease.

(b) If Lessee shall encumber its leasehold interest in the Premises and if Lessee or the holder of the indebtedness secured by the Encumbrance shall give notice to Lessor of the existence of an Encumbrance and the address of the holder, then Lessor will mail or deliver to the holder, at such address, a duplicate copy of all notices in writing which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms of this Lease. The copies shall be mailed or delivered to the holder at, or as near as possible to, the same time the notices are given to Lessee. A holder shall have the right to pay any rent due under this Lease, or pay any taxes and assessments, or perform any other obligation required of Lessee under this Lease, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of the Lease or to prevent the termination of this Lease. All payment so made and all things so performed by the holder shall be as effective to prevent a foreclosure of the rights of Lessee as if performed by Lessee.

(c) Premises

Any Encumbrance shall remain subordinate to the interest of Lessor in the

14. Subletting; Assignment.

(a) Lessee may not sublet the Premises in whole or in part without the prior written consent of Lessor, which consent shall not be unreasonably withheld. The making of any
sublease shall not release or otherwise affect any of Lessee's obligations under this Lease.

(b) Except as permitted pursuant to Section 13 of this Lease, Lessee shall not assign, transfer, or encumber this Lease, or any interest in this Lease, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Consent to an assignment shall not be deemed to be a consent to any subsequent assignment or a release of any of Lessee's obligations under this Lease. Any assignment without consent shall be void and shall, at the option of Lessor, terminate this Lease.

(c) The sale or transfer of membership interests in Lessee representing control of Lessee shall be deemed an assignment of this Lease for purposes of this Section 14 requiring consent of Lessor unless the sale or transfer is made among Lessee's existing members or is the disposition of a membership interest upon the death of the member owning the interest.

(d) In the event of a voluntary assignment by Lessee of the DBOF Agreement or Lessee's rights or interest under the DBOF Agreement, pursuant to and in accordance with the DBOF Agreement, this Lease and Lessee's interest under this Lease shall also be assigned to Lessee's assignee, unless otherwise agreed by Lessor.

(e) Upon prior written notice to Lessee, Lessor may assign its rights and interests under this Lease and in the Facility to the State of Alaska or any entity created by the Lessor to manage, operate or finance the Facility.

15. Construction of Improvements; Alterations.

(a) Construction of Facility. Lessee shall construct and operate the Facility, and shall provide water and wastewater utility services, pursuant to and in accordance with the DBOF Agreement during the term of this Lease.

(b) Alterations, Improvements, and Changes. After completion of construction of the Facility, Lessee shall have the right to make such alterations, improvements, and changes to any part of the Facility as may be required, permitted or authorized under the DBOF Agreement.

(c) Surety Bond. Prior to the commencement of any work on the Premises or the Facility, Lessee shall furnish performance and payment bonds and evidence of insurance as required under the DBOF Agreement.

16. Maintenance and Repairs; Damage to Premises.

(a) Maintenance of Improvements. Lessee shall, throughout the term of this Lease, keep and maintain the Premises, including all buildings and improvements of every kind that may be a part of the Premises, and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in accordance with the requirements specified in the DBOF Agreement, including but not limited to Article VII of the DBOF Agreement, with all such requirements deemed to apply to Premises in the same manner they apply to the Facility.

(b) No Obligation of Lessor. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any buildings or improvements on the Premises.

(c) Lessee's Compliance with Laws. Lessee shall comply with and abide by all federal, state, municipal, and other governmental statutes, ordinances, laws, and regulations
affecting the Premises, the improvements on or any activity or condition on or in the Premises.

(d) **Damage to and Destruction of Improvements.** The damage or destruction of any building or other improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease. In case of damage to or destruction of any such building or improvement, Lessee shall promptly repair and restore it as provided for in Article XVI of the DBOF Agreement. If the DBOF Agreement is terminated pursuant to Article XVI of the DBOF Agreement, this Lease shall terminate concurrently with termination of the DBOF Agreement.

17. **Liens on Premises.**

(a) **Lessee's Duty to Keep Premises Free of Liens.** Lessee shall keep all and every part of the Premises and all buildings and other improvements at any time located on the Premises free and clear of any and all mechanics, material suppliers, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvement, or repairs or additions that Lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee, and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and to indemnify Lessor and all of the Premises and all buildings and improvements on the Premises from and against any and all such liens and claims of liens and suits or other proceedings pertaining to the Premises.

(b) **Written notice.** Lessee shall give Lessor written notice no less than thirty (30) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of TwentY-FIVE THOUSAND DOLLARS ($25,000) in order that Lessor may post appropriate notices of Lessor's non-responsibility.

(c) **Contesting liens.** If Lessee desires to contest any lien, it shall notify Lessor of its intention to do so within thirty (30) days after the filing of the lien. In that case, and provided that Lessee shall on demand protect Lessor by a good and sufficient surety bond against any lien and any cost, liability, or damage arising out of such contest, Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any lien shall not, in any case, be delayed until execution is had on any judgment rendered on the lien, and such delay shall be a default of Lessee under this Lease.

(d) **Indemnification.** In the event of any such contest, Lessee shall protect and indemnify Lessor against any and all loss, expense, and damage resulting from the contest.

18. **Limitation of Liability; Indemnification.**

Lessor shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by Lessee or by any person whosoever may at any time be using or occupying or visiting the Premises or be in, on, or about the Premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessor or of any occupant, subtenant, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth. Lessee shall indemnify Lessor against any and all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the building and improvements that are hereafter placed or built on the Premises.
and to the property of Lessee in, on, or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The provisions of this Section 18 shall not apply to loss, injury, death, or damage arising by reason of the independent negligent act, error or omission, or willful misconduct of Lessor, its agents, or employees.


(a) Lessee shall pay the rent and all other sums required to be paid by Lessee under this Lease in the amounts, at the times, and in the manner provided in this Lease, and shall keep and perform all the terms and conditions on its part to be kept and performed. At the expiration or earlier termination of this Lease, Lessee shall peaceably and quietly quit and surrender to Lessor the Premises, and any improvements thereon, in good order and condition, normal wear and tear excepted, subject to the other provisions of this Lease, and, with respect to the Facility, in accordance with the requirements and specifications set forth in the DBOF Agreement.

(b) In the event of the non-performance by Lessee of any of the covenants of Lessee undertaken in this Lease, this Lease may be terminated as provided elsewhere in this Lease.

20. Insurance.

Lessee shall carry the insurance required by, and subject to the specifications and requirements set forth in, Sections 12.1 and 12.2 of the DBOF Agreement, which requirements and specifications are incorporated herein and made applicable to Lessee as if fully set forth in this Lease.

21. Involuntary Assignment.

(a) Prohibition of involuntary assignment. Except as permitted by Section 11.1 of this Lease, neither this Lease nor the leasehold estate of Lessee nor any interest of Lessee under this Lease in the Premises or in the building or improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever. Any attempt at such involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease.

(b) Effect of bankruptcy. Without limiting the generality of the provisions of Section 22(a), Lessee agrees that in the event any proceedings under any state or federal bankruptcy code be commenced by or against Lessee, and, if against Lessee, the proceedings shall not be dismissed within a period of sixty (60) days, or in the event Lessee is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which Lessee is a party, with authority to take possession or control of the Premises or the business conducted on the Premises by Lessee, any such event or any involuntary assignment prohibited by the provisions of the preceding Section 22(a) shall be deemed to constitute a breach of this Lease by Lessee and shall, at the election of Lessor, but not otherwise, without notice or entry or other action of Lessor terminate this Lease and also all rights of Lessee under this Lease and in and to the Premises and also all rights of any and all persons claiming under Lessee.

22. Default.

(a) Except as to the provisions of Section 21, Lessee shall not be deemed to be in default under this Lease in the payment of rent or the payment of any other moneys as required or in the furnishing of any bond or insurance policy when required in this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default and Lessee fails to cure the default within the fifteen (15) day period.
(b) Except as to the provisions or events referred to in Section 22(a) Lessee shall not be deemed to be in default of its performance or nonperformance of any other obligation under this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default, and Lessee fails to cure the default within the fifteen (15) day period, or, if the default is of such a nature that it cannot be cured within fifteen (15) days, Lessee fails to commence to cure the default within the period of fifteen (15) days or fails thereafter to proceed to cure the default with all possible diligence.

(c) Notwithstanding any provision in this Lease to the contrary, Lessee shall be deemed to be in default under this Lease upon the occurrence of an "Event of Default" under Article XIII of the DBOF Agreement that is not cured in accordance with the provisions of Article XIII of the DBOF Agreement.

23. **Lessor's Remedies.**

Subject to any conflicting provisions of the DBOF Agreement relating to the rights of the Matanuska-Susitna Borough with respect to the Facility, which provisions, if any, shall take precedence with respect to the Facility:

In the event of any default under this Lease by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Lessee. Should Lessor elect to re-enter, as provided in this Lease, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Premises or any part of the Premises for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and on such other terms and conditions as Lessor, in its sole discretion, may deem advisable, including the right to make alterations and repairs to the Premises. On each re-letting, (a) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than rent due under this Lease, the expenses of re-letting and of making such alterations and repairs, incurred by Lessor, and the amount, if any, by which the rent reserved in this Lease for the period of re-letting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the Premises for the period on re-letting; and (b) at the option of Lessor, rents received by Lessor from re-letting shall be applied, first, to the payment of any indebtedness, other than rent due under this Lease from Lessee to Lessor; second, to the payment of any expenses of re-letting and of making alterations and repairs; third, to the payment of rent due and unpaid under this Lease, and the residue, if any, shall be held by Lessor and applied in payment of future rent as it may become due and payable under this Lease. If Lessee has been credited with any rent to be received by re-letting under (a), above, and the rent was not promptly paid to Lessor by the new tenant, or if the rentals received from the re-letting under (b), above, during any month is less than that to be paid during that month by Lessee under this Lease, Lessee shall pay any deficiency to Lessor. The deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Premises by Lessor shall be construed as an election: on the part of Lessor to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination of this Lease is decreed by a court of competent jurisdiction. In spite of any re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all
damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

24. **Remedies are Cumulative.**

All remedies conferred by this Lease shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

25. **Reimbursement of Expenses.**

In the event that Lessee, by failing or neglecting to do or perform any act or thing provided in this Lease by it to be done or performed, shall be in default under this Lease after notice and failure to cure as provided in Section 23 of this Lease, then Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Premises and Facility for such purposes, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Lessee on account of such election. Lessee shall repay to Lessor on demand the entire expense incurred on account of such election, including compensation to the agents and employees of Lessor. Any act or thing done by Lessor pursuant to the provisions of this Section shall not be or be construed as a waiver of any such default by Lessee, or as a waiver of any covenant, term, or condition contained in this Lease, or of any other right or remedy of Lessor, under this Lease or otherwise.

26. **Interest.**

All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when they become due as in this Lease provided, shall bear interest from the date they become due until paid at the Wells Fargo prime rate, plus two percent (2%) per annum or the maximum rate permitted by law, whichever is less.

27. **Condemnation.**

(a) **Effect of Total Condemnation.** In the event the entire Premises and improvements thereon shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and Lessee shall then be released from any liability thereafter accruing under this Lease.

(b) **Effect of Partial Condemnation.** In the event a portion of the Premises or improvements thereon shall be so appropriated or taken and the remainder of the Premises and improvements shall not be suitable for the use then being made of the Premises by Lessee, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of termination within thirty (30) days after Lessor has notified Lessee in writing that the Premises or improvements have been so appropriated or taken. If there is a partial taking and Lessee does not so terminate this Lease, then this Lease shall continue in full force and effect as to the part not taken.

(c) **Condemnation award.** In the event of a total or partial taking of the Premises or improvements thereon by eminent domain, then in any such condemnation proceedings, Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the condemning or taking.
28. **Surrender of Lease; Merger.**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation of this Lease, shall not work a merger and shall, at the option of Lessor, either terminate any and all existing subleases or sub tenancies or operate as an assignment to it of any or all such subleases or sub tenancies.

29. **Ownership of Improvements.**

(a) All improvements existing on the Premises as of time of execution of this Lease, and all improvements and renovations constructed on the Premises by Lessee as permitted by this Lease, shall be owned by Lessee until expiration of or earlier termination (regardless of whatever cause) of this Lease, at which time they shall be surrendered (consistent with Section 20) and become the property of and be owned by the Lessor, free and clear of all encumbrances, as part of the consideration of this Lease. No additional compensation shall be due Lessee from the Lessor except as may be provided for in the DBOF Agreement. Lessee may not, except with the prior written consent of the Lessor, remove any improvements or renovations from the Premises, nor waste, destroy or modify any improvements on the Premises in such a way as to devalue the improvements.

(b) Except for trade fixtures, appliances, and furniture acquired in whole or in part utilizing proceeds from the sale of bonds by Lessor, which shall at all times remain upon and be left upon the Premises, Lessee shall have the right to remove trade fixtures, appliances, and furniture which have not been affixed to the Premises (unless the Lessor gives prior written consent to Lessee leaving such on the Premises) and Lessee shall, at its sole cost and expense, repair any damage to the Premises and/or improvements caused by such removal.

30. **Release/Environmental Indemnification.**

(a) To the extent allowed by law, Lessee releases Lessor from and shall indemnify, defend, and hold Lessor harmless from and against any and all claims, demands, damages, losses, liens, costs, and expenses, including attorneys' fees and costs, which accrue to, or are incurred by, Lessor on or after the date of this Lease that arise directly from or out of any activities on the Premises during Lessee's possession or control of the Premises that directly or indirectly result in the Premises becoming contaminated with Hazardous Substances.

(b) Lessee further agrees to be held responsible for payment of reasonable and required costs of any cleanup, abatement, remediation, removal, or restorative work required by any federal, state, or local governmental agency with appropriate jurisdiction because of any Hazardous Substance present in the soil or groundwater on or under the Premises which is demonstrated to be a result of Lessee's use and occupancy of the Premises.

(c) The term "Hazardous Substances" as used in this Lease shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances," which are or become regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including the Comprehensive Environmental Response and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Toxic Substance Control Act, 15 U.S.C. Sections 2601 et seq.; the Resource
Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; substances controlled by the laws of the state of Alaska as hazardous substances, petroleum products, waste or materials, including those defined in AS 46.03.826(5) and AS 46.03.900(9); asbestos containing materials or any petroleum products or derivatives; and in the rules and regulations adopted and guidelines promulgated pursuant to such provisions.

31. Environmental Risk for Preexisting Contamination.

Neither Lessor nor Lessee, nor any of their respective officers, employees, agents, attorneys, or representatives, have previously made, nor does this Lease make, any representations or warranties, and none of the persons or entities described above shall in any way be liable for or with respect to:

(a) the condition of the Premises or the suitability of the Premises for Lessee's intended use(s);

(b) the presence or existence of any Hazardous Substances or any other substance as to which the discharge, leakage, spillage, or presence on the Premises would be regulated by applicable state or federal law.

32. Inspection.

Lessee acknowledges that Lessee has had the opportunity to evaluate, and will have the opportunity to evaluate further, Lessee's need for any tests for the presence of environmental contamination and/or Hazardous Substances on the Premises and has conducted a Phase I Environmental Site Assessment or any other or further environmental or other testing deemed necessary or appropriate by Lessee.

33. Waiver.

(a) The waiver by either Party of, or the failure of either Party to take action with respect to any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition contained in this Lease.

(b) The subsequent acceptance of rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of a preceding breach at the time of acceptance of rent.

34. Hold Over.

Any holding over after the expiration of the term of this Lease, with the consent of Lessor, shall be construed to be a tenancy from month-to-month, at the same rental as required to be paid by Lessee for the period immediately prior to the expiration of the term of this Lease, and shall otherwise be on the terms and conditions specified in this Lease, so far as applicable.

35. Time is of the Essence.

Time is of the essence for this Lease, and of each and every covenant, term, condition, and provision of this Lease,
36. **Memorandum of Lease.**

The parties agree not to record this Lease, but upon the request of either party and upon meeting the conditions in Section 7, they shall record a memorandum of lease as prescribed by Alaska law.

37. **Applicable Law; Jurisdiction; Venue.**

It is agreed that this Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska. Any claims or disputes arising under this Lease shall be brought in the Superior Court for the Third Judicial District, State of Alaska, at Palmer, Alaska.

38. **Integration; Agreement Documents.**

This Lease and the DBOF Agreement, including the additional documents and agreements described in Section 20.13 of the DBOF Agreement, shall constitute the entire agreement between the parties with respect to the lease of the Premises to Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent specifically recited in this Lease. This Lease is intended to be complementary and interpreted in harmony so as to avoid conflict with the DBOF Agreement and the other documents described in the DBOF Agreement. In the event of any inconsistency, conflict or ambiguity between or among this Lease, the DBOF Agreement or the other documents described to in the DBOF Agreement, such instruments shall be prioritized as set forth in Section 17.1 of the DBOF Agreement (with respect to which this executed Ground Lease is one of the Appendices described in Section 17.1.3 of the DBOF Agreement).

Whenever in this Lease reference is made to the DBOF Agreement, the applicable provisions of the DBOF Agreement, as the specific reference dictates or as the context reasonably requires, shall be deemed to be incorporated herein and any provision referring to the "MSB" shall be deemed to refer to Lessor and any provision referred to "Company" shall be deemed to refer to Lessee.

39. **Amendment.**

Any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

40. **Binding Effect.**

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the successors, administrators, and assigns of all of the parties to this Lease. All of the parties shall be jointly and severally liable under this Lease.

41. **Non-Discrimination Clause.**

Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex or marital status or who is a "qualified individual with a disability," as that phrase is defined in the Americans with Disabilities Act of 1990. Lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, marital status or physical or mental disability. Such action shall include but not be limited to the following:
employment, upgrading, demotion or transfer; recruitment or recruiting advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

42. **Notice.**

Whenever this Agreement requires that notice be provided to the other Party, such notice shall be in writing and addressed as set forth below. Notices will be deemed to have been validly given: (i) upon receipt if hand delivered or sent by overnight courier service, or (ii) four (4) days after being sent by registered or certified mail, postage prepaid; provided, that any notice shall not be effective as to a Party unless addressed to that Party's addresses for notices. Either Party may change the persons or address(es) for notice by a written notice to the other Party given pursuant to this Section.

To Lessor:

Matanuska-Susitna Borough  
350 East Dahlia Avenue  
Palmer, Alaska 99645  
Attn: Borough Manager

With a copy to:

Matanuska-Susitna Borough  
350 East Dahlia Avenue  
Palmer, Alaska 99645 Attn:  
Borough Attorney

To Lessee:

With a copy to:

43. **Interpretation.**

Lessor and Lessee understand, agree and acknowledge that:

(a) This Lease has been freely negotiated and drafted by both Parties; and

(b) That, in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either Party by virtue of that party having drafted this Lease or any portion thereof.