

JUNE __, 2022

LEASE AND OPERATIONS AGREEMENT

**WITH _____, IN RESPONSE
TO RFP 2022P029, FOR FACILITY LEASE FOR RESOURCE RECOVERY
CENTER**

In consideration of the mutual promises herein, ANCHORAGE and
_____ agree as follows. This contract consists of:

- A. Part 1, Lease and Operations Agreement consisting of 18 pages (“Agreement”);
- B. Appendix A Technical Prospectus for the Proposed Municipality of Anchorage Resource Recovery Center (“Technical Prospectus”).

**MUNICIPALITY OF ANCHORAGE
SOLID WASTE SERVICES DEPARTMENT
RESOUCRE RECOVERY CENTER**

LEASE AND OPERATIONS AGREEMENT

DATED _____, 2022

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LEASE AND OPERATIONS AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is made and executed on _____, 2022, by and between the MUNICIPALITY OF ANCHORAGE, an Alaska municipal corporation (“Lessor”); and _____ (“Lessee”).

WHEREAS, the Lessor owns the following described property:

- Campbell Creek Commercial Park TR E2 (Plat # 780045)
- Campbell Creek Commercial Park LT E-3A (Plat # 940038)
- Campbell Creek Commercial Park LT E-3C (Plat # 940038)

situated in the Anchorage Recording District, Third Judicial District, State of Alaska, together with all appurtenances thereto (the “Premises”); and

WHEREAS, Lessee desires to lease the Premises for purposes of operating a Resource Recovery Center as defined and designated herein, and Lessor is willing to lease the Premises to Lessee under the terms and conditions set forth herein;

ACCORDINGLY, IN AND FOR THE CONSIDERATION RECITED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

1. Lease of Premises.

A. Lessor leases the Premises to Lessee and Lessee leases the Premises from Lessor; PROVIDED Lessor retains the right to designate or grant rights-of-way or utility easements across the Premises without compensation, except Lessee shall be compensated for the taking or destruction of any improvements, and except further that Lessee, at its option, may either terminate this Agreement or demand a rental adjustment to reflect any reduction in value of the Premises. As used in this Agreement, the term “Premises” refers to the real property described above, together with any appurtenances and other improvements located on the Premises from time to time during the term of this Agreement.

2. Initial Term with Reverter; Option to Renew.

A. The initial term of this Agreement shall be TEN (10) years, commencing upon execution of this Agreement and expiring on _____, 20__;

B. Lessor grants to Lessee, subject to the conditions set forth below, the right and option to renew this Agreement for up to four periods of FIVE (5) years each, with rents determined as provided herein, and otherwise subject to and on all of the terms and conditions contained in this Agreement, except that there shall be no further option to renew this Agreement. This option

must be exercised by the giving to Lessor, on or before _____, 20__, a written notice of the exercise of the option by Lessee, but Lessee shall in no event be entitled to renew the term of this Agreement, even though the notice be timely given, unless Lessee shall have timely performed all of its obligations under this Agreement, and shall not be in default in the performance of any such obligations, on the date of the expiration of the initial term of this Agreement. ANY RENEWAL OF THIS AGREEMENT WILL BE SUBJECT TO ALL PROVISIONS OF THE ANCHORAGE MUNICIPAL CODE THEN IN EFFECT, INCLUDING APPROVAL OF THE ANCHORAGE ASSEMBLY.

C. As used in this Agreement, the expression "term of this Agreement" refers to the initial term and any renewal of this Agreement.

3. Rent.

A. Tenant covenants and agrees to pay to the Landlord rent of THIRTY THOUSAND DOLLARS (\$30,000.00) per month beginning on the first month of occupancy. Any partial month shall be pro-rated. Said rent is due and payable monthly, in advance, on or before the first day of each month, at the address of the Landlord set forth in Section 11 of this Lease or at such other place as the Landlord shall designate in writing.

B. If Lessee exercises its option to renew this Agreement, Lessor may require an adjustment in the amount of the rental for each five (5)-year period of the renewal term, in each case by giving written notice to Lessee at least ninety (90) days prior to the commencement of the five (5)-year period.

(1) In the event that Lessor shall require a rental adjustment for any of such periods, Lessor and Lessee may agree in writing on the amount of the rental for the period in question. If an agreement is not reached and signed by both parties within thirty (30) days after the giving by Lessor to Lessee of written notice of a rental adjustment, then the rental for the period in question shall be determined by 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 Anchorage, on request of either party or of either of the first two appraisers, as the case may be.

(2) This is an absolute net lease, and Lessor shall not be required to provide any services or do any act or thing with respect to the Premises except as may be specifically provided

herein. 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 otherwise specifically provided in this Agreement.

4. 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 Agreement and that Lessee shall have quiet and peaceable possession of the Premises during the term of this Agreement.

5. Use of Premises.

A. Lessee shall at all times use and manage the Premises to provide a Resource Recovery Center, together with facilities incidental or related thereto. Lessee shall not use, or permit the Premises, or any part of the Premises, to be used, for any purpose or purposes other than the purpose or purposes stated in this Agreement

B. The detailed terms and conditions pertaining to the use of the facility and property, minimum service requirements for operation of said Resource Recovery Center, Owner's (Lessor's) use of the facility and property, minimum maintenance and operations requirements, and all other factors relating to the use of the use of the facility and property and the Lessee's responsibilities as Resource Recovery Center operator are contained in Contract Appendix 1, Technical Prospectus for the Proposed Municipality of Anchorage Resource Recovery Center.

C. Lessee shall, at its sole cost, comply with all requirements of any insurance organization or company necessary for the maintenance of insurance, as provided in this Agreement, covering any building and appurtenances at any time located on the Premises.

6. Compliance with Laws.

A. During the term of this Agreement, Lessee shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises.

B. Lessee shall not commit, or suffer to be committed, any waste or nuisance on the Premises.

7. Abandonment.

Lessee shall not vacate or abandon the Premises at any time during the term of this Agreement. 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.

8. Lessor's Entry Upon Premises.

Lessee shall permit Lessor and the agents and employees of Lessor to enter upon and into the Premises at all reasonable times for the purpose of inspecting the Premises, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, or other purposes identified herein, 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.

9. Encumbrance of Leasehold Interest.

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 or 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 Agreement. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability under this Agreement. All requirements of this Agreement and the Technical Prospectus must be cured and brought current as a condition of continuing the lease for the remaining term after foreclosure.

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 Agreement. 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 or served on Lessee. The holder may, at its option, at any time before the rights of Lessee shall be terminated as provided in this Agreement, pay any rent due under this Agreement, or pay any taxes and assessments, or perform any other obligation required of Lessee under this Agreement, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this Agreement or to prevent the termination of this Agreement. All payments 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.

10. Subletting; Assignment.

A. Lessee shall not sublet the Premises in whole or in part without the prior written consent of Lessor; PROVIDED any sublease shall not release or otherwise affect any of Lessee's obligations under this Agreement. Any sublease without such consent shall be void and, at the option of Lessor, terminate this Agreement.

B. Except as provided in section 9, Lessee shall not assign, transfer, or encumber this Agreement, or any interest in this Agreement, without the prior written consent of Lessor, and a consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such consent shall be void and, at the option of Lessor, terminate this Agreement.

11. Notice.

A. All notices required or permitted in this Agreement shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered or certified mail, postage prepaid, and addressed as follows:

To Lessor:

Municipality of Anchorage
P.O. Box 196650
Anchorage, Alaska 99519-6650
ATTN: Real Estate Services

With copy to:

Municipality of Anchorage
P.O. Box 196650
Anchorage, Alaska 99519-6650
ATTN: Municipal Attorney

To Lessee:

B. The address for notice for either party may be changed by written notice given by that party to the other party as above provided.

12. Taxes.

A. Taxes as additional rent. As additional rental under this Agreement, Lessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on or against the Premises, or any part of the Premises, the leasehold of Lessee in and under this Agreement, the Premises, any building or buildings or other

improvements on the Premises, or on or against Lessee's estate created by this Agreement that may be a subject of taxation, or on or against Lessor by reason of its ownership of the fee underlying this Agreement, during the entire term of this Agreement, excepting only those taxes specifically excepted below.

B. Assessments affecting improvements. Specifically and without in any way limiting the generality of the provisions of paragraph A of this section, 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 any 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 Agreement or any extended term of this Agreement, 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 12 shall be prorated at the commencement and expiration of the term of this Agreement.

C. Contesting taxes. 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 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.

D. Receipts. Lessee shall obtain and deliver receipts to Lessor for all taxes, assessments, and other items required under this Agreement to be paid by Lessee, promptly on payment of any such taxes, assessments, and other items.

13. Construction of Improvements.

A. Plans and specifications. Lessee shall, at Lessee's sole expense, prepare plans and specifications for any desired improvements to be constructed on the Premises. Such plans and specifications shall be submitted to Lessor for Lessor's written approval or any revisions required by Lessor. Lessor shall not unreasonably withhold such approval, and in the event of disapproval, Lessor shall give to Lessee an itemized statement of reasons for disapproval within ninety (90) days after the plans and specifications are submitted to Lessor.

B. Alterations, improvements, and changes permitted. Lessee shall have the right to make such alterations, improvements, and changes to any improvement that may from time to time be on the Premises as Lessee may deem necessary, or to replace any building with a new one of at least

equal value, provided that prior to making any structural alterations, improvements, or changes, or to replacing any building, Lessee shall obtain Lessor's written approval of plans and specifications therefore, which approval Lessor shall not unreasonably withhold, provided that the value of the building shall not be diminished and the structural integrity of the building shall not be adversely affected by any such alterations, improvements, or changes, or that any proposed new building is at least equal in value to the one that it is to replace, as the case may be. In the event of disapproval, Lessor shall give to Lessee an itemized statement of reasons for the disapproval within ninety (90) days after the plans and specifications have been submitted to Lessor.

C. Arbitration. If plans and specifications are not approved by Lessor and Lessee in writing within ninety (90) days after they are first submitted to Lessor, then Lessor and Lessee shall each select an arbitrator, and the two arbitrators so selected shall select a third arbitrator. The three arbitrators so selected shall hear and determine the controversy and their decision as to the final plans and specifications shall be final and binding on both Lessor and Lessee, who shall bear the cost of the arbitration equally between them. The arbitrators shall determine the controversy by majority vote and notify Lessor and Lessee in writing of their determination within sixty (60) days after the controversy has first been submitted to the arbitrators.

D. Surety Bond. Prior to the commencement of any work, Lessee shall furnish Lessor with a good and sufficient surety bond guaranteeing the completion of the improvement and the payment of all bills in connection with the work.

E. Disposition of new improvements. Any new building constructed by Lessee on the Premises, and all alterations, improvements, changes, or additions made in or to the Premises shall be the property of Lessor, and Lessee shall have only a leasehold interest therein, subject to the terms of this Agreement.

14. Maintenance and Repairs; Damage to Premises.

A. Maintenance of improvements. Lessee shall, throughout the term of this Agreement, at its own cost, and without any expense to Lessor, 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 good, safe, sanitary, and neat order, condition and repair, and, except as specifically provided in this Agreement, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever.

B. No obligation of Lessor to make improvements. 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, destruction, or partial destruction of any building or other improvement that is a part of the Premises shall not release Lessee from any obligation under this Agreement, except as expressly provided below. In case of damage to or destruction of any such building or improvement, Lessee shall at its own expense promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering damage or destruction shall be made available to Lessee for repair or replacement.

E. Damage or destruction occurring toward end of term. In spite of anything to the contrary in the immediately preceding paragraphs of this section, in case of destruction of the building on the Premises or damage to the building from any cause so as to make it untenable occurring during the last five (5) years of the term of this Agreement, Lessee, if not then in default under this Agreement, may elect to terminate this Agreement by written notice served on Lessor within sixty (60) days after the occurrence of the damage or destruction. In the event of such termination, there shall be no obligation on the part of Lessee to repair or restore the building or improvements nor any right on the part of Lessee to receive any proceeds collected under any insurance policies covering the building or any part of the building. On such termination, rent, taxes, assessments, and any other sums payable by Lessee to Lessor under this Agreement shall be prorated as of the termination date. In the event any rent, taxes, or assessments shall have been paid in advance, Lessor shall rebate any such payment for the unexpired period for which payment shall have been made.

F. Election not to terminate. If, in the event of destruction or damage during the last five (5) years of the term of this Agreement, Lessee does not elect to terminate this lease, the proceeds of all insurance covering the damage or destruction shall be made available to Lessee for repair or replacement, and Lessee shall be obligated to repair or rebuild the building as provided above.

15. Utilities.

Lessee shall promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Premises throughout the term of this Agreement, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the Premises and all activities conducted on the Premises, and Lessor shall have no responsibility of any kind for any such utilities.

16. 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 Agreement 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 Agreement.

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.

17. 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 Lessee 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 two preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the gross negligence or willful misconduct of Lessor, its agents, or employees.

18. Attorneys Fees.

If any action at law or in equity shall be brought to recover any rent under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

19. Surrender of Premises.

A. Lessee shall pay the rent and all other sums required to be paid by Lessee under this Agreement in the amounts, at the times, and in the manner provided in this Agreement, 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 Agreement, Lessee shall peaceably and quietly quit and surrender to Lessor the Premises, including all improvements situated thereon, in good order and condition, normal wear and tear excepted, free and clear of all liens, encumbrances and covenants, conditions and restrictions created by or through Lessee, subject to the other provisions of this Agreement.

B. In the event of the non-performance by Lessee of any of the covenants of Lessee undertaken in this Agreement, this Agreement may be terminated as provided elsewhere in this Agreement.

20. Insurance.

A. Property insurance. Lessee shall, at all times during the term of this Agreement and at Lessee's sole expense, keep all improvements that are now or hereafter a part of the Premises insured against loss or damage from all causes, including earthquake, flood, boiler and machinery, and environmental risks, for the full replacement value of the improvements, with loss payable to Lessor and Lessee as their interests may appear. Any loss adjustment shall require the written consent of both Lessor and Lessee.

B. Liability insurance. Lessee shall maintain in effect throughout the term of this Agreement commercial general liability insurance or its equivalent covering the Premises and its appurtenances and the sidewalks fronting on them with a combined single limit of Five Million Dollars (\$5,000,000) per occurrence. Such insurance shall specifically insure Lessee against all liability assumed by it under this Agreement, as well as liability imposed by law, and shall name Lessor as an additional insured.

C. Lessor's right to pay premiums on behalf of Lessee. All of the policies of insurance referred to in this section shall be written in a form satisfactory to Lessor and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums for insurance and deliver policies, or certificates of policies, to Lessor. In the event of the failure of Lessee, either to effect insurance called for in this Agreement or to pay the premiums for the insurance or to deliver the policies, or certificates of the policies, to Lessor, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums for the insurance, which premiums shall be repayable to Lessor with the next installment of rent. Failure to repay the same shall carry with it the same consequence as failure to pay any installment of rent. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give Lessor thirty (30) days written notice before the policy or policies in question shall be altered or cancelled. Lessor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Lessee.

D. Definition of full replacement value. The term "full replacement value" of improvements as used in this Agreement shall mean the actual replacement cost of the improvements from time to time less exclusions provided in the normal fire insurance policy. In the event either party believes that the full replacement value has increased or decreased, it shall have the right, but, except as provided below, only at intervals of not less than three (3) years, to have such full replacement value re-determined by the property insurance company which is then carrying the largest amount of property insurance on the Premises (referred to as "impartial appraiser"). The party desiring to have the full replacement value so re-determined by the impartial appraiser shall promptly on submission of the determination to the impartial appraiser give written notice of the submission to the other party to this Agreement. The determination of the impartial appraiser shall be final and binding on the parties to this Agreement, and Lessee shall promptly increase (or may decrease) the amount of the insurance carried pursuant to this section as the case may be to the amount so determined by the impartial appraiser. The determination shall be binding for a period of three (3) years and thereafter until superseded by agreement between the parties to this Agreement or by a subsequent re-determination by an impartial appraiser. Each party shall pay one-half of the fee, if any, of the impartial appraiser. If during any such three (3)-year period, Lessee shall have made improvements to the Premises, Lessor may have such full replacement value re-determined at any time after the improvements are made, regardless of when the full replacement value was last determined.

E. Adjustment of coverage. In the event that either party shall at any time deem the limits of the

commercial general liability insurance or its equivalent then carried to be either excessive or insufficient, the parties shall endeavor to agree on the proper and reasonable limits for insurance then to be carried. Insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to the provisions of this section, but if the parties shall be unable to agree thereon, the proper and reasonable limits for insurance then to be carried shall be determined by an impartial third person selected by the parties, or should they be unable to agree on a selection, by an impartial third person chosen by the presiding judge of the Superior Court for the Third Judicial District, State of Alaska, at Anchorage, on application by either party. The decision of the impartial third person as to the proper and reasonable limits for insurance then to be carried shall be binding on the parties, and insurance shall be carried with the limits as thus determined until the limits are again changed pursuant to the provisions of this section. The expenses of the determination shall be borne equally by the parties.

F. Blanket insurance policies. In spite of anything to the contrary contained in this section, Lessee's obligations to carry the insurance provided for in this section may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee. However, the coverage afforded Lessor shall not be reduced or diminished or otherwise be different from that which would have existed under a separate policy meeting all other requirements of this Agreement by reason of the use of the blanket policy of insurance. The requirements of Paragraph E of this section must also be otherwise satisfied.

G. Cost of insurance deemed additional rental. The cost of insurance required to be carried by Lessee in this section shall be deemed to be additional rent under this Agreement.

21. Involuntary Assignment.

A. Prohibition of involuntary assignment. Neither this Agreement nor the leasehold estate of Lessee nor any interest of Lessee under this Agreement 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 Agreement.

B. Effect of bankruptcy. Without limiting the generality of the provisions of the preceding paragraph A of this section, 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 before either an adjudication in bankruptcy or the confirmation of an arrangement, plan, or reorganization, 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, and such receiver is not discharged within a period of thirty (30) days after his or her appointment, any such event or any involuntary assignment prohibited by the provisions of the preceding paragraph A of this section shall be

deemed to constitute a breach of this Agreement by Lessee and shall, at the election of Lessor, but not otherwise, without notice or entry or other action of Lessor terminate this Agreement and also all rights of Lessee under this Agreement 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 10 of this Agreement, Lessee shall not be deemed to be in default under this Agreement in the payment of rent or the payment of any other monies as required or in the furnishing of any bond or insurance policy when required in this Agreement unless Lessor shall first give to Lessee ten (10) days written notice of the default and Lessee fails to cure the default within ten (10) days.

B. Except as to the provisions or events referred to in the preceding paragraph of this section, Lessee shall not be deemed to be in default of its performance or nonperformance of any other obligation under this Agreement or the Technical Prospectus unless Lessor shall first give to Lessee thirty (30) days written notice of the default, and Lessee fails to cure the default within the thirty (30)-day period, or, if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure the default within the period of thirty (30) days or fails thereafter to proceed to cure the default with all possible diligence.

C. A default in performance of any of any obligation in the Technical Prospectus shall be deemed a default of this Agreement.

23. Lessor's Remedies.

In the event of any breach of this Agreement or the Technical Prospectus 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 Agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Agreement or it may from time to time, without terminating this Agreement, 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 Agreement) 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 Agreement, 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 Agreement 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 Agreement 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 Agreement, 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 Agreement. 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 Agreement, 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 Agreement unless a written notice of such intention is given to Lessee or unless the termination of this Agreement 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 Agreement for such previous breach. Should Lessor at any time terminate this Agreement 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 Agreement shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

25. Reimbursement of Expenses.

A. In the event that Lessee by failing or neglecting to do or perform any act or thing provided in this Agreement by it to be done or performed, shall be in default under this Agreement and such failure shall continue for a period of ten (10) days after written notice from Lessor specifying the nature of the act or thing to be done or performed, 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 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 Agreement, or of any other right or remedy of Lessor, under this Agreement or otherwise.

26. Interest.

All amounts payable by Lessee to Lessor under any of the provisions of this Agreement, if not paid when they become due as in this Agreement provided, shall bear interest from the date they

become due until paid at the maximum rate permitted by law.

27. Condemnation.

A. Effect of total condemnation. In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Agreement shall terminate and expire as of the date of such taking, and Lessee shall then be released from any liability thereafter accruing under this Agreement.

B. Effect of partial condemnation. In the event a portion of the Premises shall be so appropriated or taken and the remainder of the Premises shall not be suitable for the use then being made of the Premises by Lessee, Lessee shall have the right to terminate this Agreement 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 has been so appropriated or taken.

C. If there is a partial taking and Lessee does not so terminate this Agreement, then this Agreement shall continue in full force and effect as to the part not taken, and the rental to be paid by Lessee during the remainder of the term, subject to adjustment as provided in the rental adjustment provisions of section 3 of this Agreement, shall be determined in the manner provided for in such rental adjustment provisions. Any such determination shall not affect or change the times at which Lessor may require an adjustment in rent under such provisions; provided, however, that the words "in no event shall the appraised rental value be less than the rental then being paid by Lessee" appearing in the rental adjustment provisions shall not apply with respect to such determination, but shall apply with respect to any subsequent adjustment under the rental adjustment provisions.

D. Condemnation award. In the event of the termination of this Agreement by reason of the total or partial taking of the Premises 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.

E. In the event of a partial taking of the Premises and this Agreement is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending on (INSERT DATE)_____.

28. Surrender of Lease; Merger.

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

29. Waiver.

A. The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of any term, covenant, or condition contained in this Agreement 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 Agreement.

B. The subsequent acceptance of rent under this Agreement by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Agreement, 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.

30. Hold Over.

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

31. TIME IS OF THE ESSENCE.

TIME IS OF THE ESSENCE of this Agreement, and of each and every covenant, term, condition, and provision of this Agreement.

32. Memorandum of Lease.

The parties agree not to record this Agreement, but upon the request of either party, they shall record a memorandum of lease as prescribed by Alaska law.

33. Applicable Law.

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alaska.

34. Integration.

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

35. Amendment.

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

36. Binding Effect.

The covenants and conditions contained in this Agreement 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 Agreement. All of the parties shall be jointly and severally liable under this Agreement.

MUNICIPALITY OF ANCHORAGE

By: _____
Municipality of Anchorage AUTH. SIGNATURE

CONTRACTOR – TO BE INSERTED

By: _____
Contractor – AUTH. SIGNATURE