

**State of Alaska, Department of Natural Resources
Division of Mining, Land & Water
Northern Regional Land Office**

Technical Update to Final Finding and Decision
Alaska Industrial Development and Export Authority
ADL 421055 Negotiated Lease (AS 38.05.070(d))

This Technical Update to the Final Finding and Decision (FFD) is intended to update and complement the FFD dated December 12, 2018 for this lease application. The updates and changes referenced in this document have been determined to be minor changes which do not significantly change the intent of the determinations or substantive requirements of the FFD, and thus do not require additional public notice or appeal opportunities pursuant to state statutes and regulations. Nevertheless, this Technical Update will be posted on the State of Alaska Online Public Notice website, provided to AIDEA and to any party who previously commented on the best interest finding.

Background

Alaska Industrial Development and Export Authority (AIDEA) applied for a standard lease under Alaska Statute 38.05.070 in order to convert use of its existing, restricted use lease under Alaska Statute 38.35, including a pad constructed on the lease with reduced-cost gravel, to general commercial/industrial use. This lease conversion was requested to achieve flexibility for developing, subleasing, or assigning the lease for a variety of commercial uses and users. The Division of Mining, Land, and Water (DMLW) Northern Regional Land Office (NRO) issued the FFD outlining the conceptual approval and necessary requirements (including gravel payment options) for this lease conversion on December 12, 2018. The FFD provided options for AIDEA to satisfy payment of the \$531,750 owed in order to allow commercial/industrial use of the pad, which was otherwise limited. A proposed Entry Authorization (EA) and sample lease documents provided to AIDEA after issuance of the FFD also reflected many other standard lease terms and conditions, such as indemnification and assignment provisions.

On January 2, 2019 AIDEA submitted a timely appeal of the December 12, 2018 FFD setting forth several objections to conditions of the FFD that were not acceptable to AIDEA. On May 28, 2019 AIDEA withdrew its appeal with prejudice. DNR accepted the withdrawal on May 29, 2019, thereby setting that date as the effective date of the FFD as a final administrative decision of the Department.

Subsequently, AIDEA submitted comments and questions to NRO regarding numerous EA and lease stipulations, and met with DNR Commissioner Feige, Deputy Commissioner Brent Goodrum, and Department of Law Assistant Attorney General Colleen Moore regarding several EA and lease stipulations, and raised some practical and legal concerns. After further consideration of the proposed lease conversion and the issues raised by AIDEA, DNR has agreed to revise certain terms of the EA and lease, as provided below.

1. AIDEA's gravel payment obligation and terms of payment will be removed from and will not be a term of the EA or lease. Instead, the gravel payment terms and AIDEA's obligation to pay the regional sales price for the gravel in order to allow the gravel pad to be used for commercial/industrial purposes will be addressed in a separate agreement between AIDEA and DMLW that must be signed prior to and as a condition of issuance of the EA or Lease. The new terms 1) no longer require annual payments or an initial payment date; 2) provide for a date certain

2. The assignment and indemnification stipulations in the EA and Lease Additional Stipulations will be updated and clarified as follows: The assignment stipulation will clarify that AIDEA can assign either the EA or lease and that AIDEA will be released from all rights and obligations of the EA or lease provided that the assignment is approved in advance by DMLW, the EA or lease is in good standing, and all other requirements for assignment are met. The indemnification stipulations will reflect that, during the time that the lessee is an agency or public corporation of the state of Alaska, any expenditures of funds required to fulfill any indemnity obligations shall be subject to an appropriation from the legislature that can be used for that purpose.

The Gravel Repayment Agreement, revised EA and Lease/Additional Stipulations documents are attached for reference.

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STATE OF ALASKA
Department of Natural Resources
Division of Mining, Land & Water

ENTRY AUTHORIZATION
Under AS 38.05.070

ADL 421055 – Negotiated Lease

Alaska Industrial Development and Export Authority, herein known as the lessee, is issued this Entry Authorization (EA) authorizing the use of state land in accordance with the negotiated lease terms of ADL 421055, in order to allow all prerequisites to the issuance of that lease to be completed so that the actual lease can be issued. The land authorized to be used is located within:

SW ¼ of Section 3, Township 10 North, Range 14 East, Umiat Meridian,
as shown on Attachment A (leased parcel).

This EA is effective and issued on the date it is signed by the Authorized Officer. The effective date of the EA will become the start date of the lease term if the lease is issued. The EA will expire three years after it becomes effective.

This EA is issued for the purpose of authorizing:

General commercial activities to support North Slope oilfield operations.

All activities, whether conducted by the lessee or an approved sublessee, must be approved by DMLW prior to the activity.

All use and development must be approved and shall be conducted in accordance with the following stipulations:

- 1) **Authorized Officer.** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), is the Regional Manager or designee.
- 2) **Compliance with Governmental Requirements.** The lessee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related to this authorization. The lessee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 3) **Change of Contact Information.** The lessee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
- 4) **Incurred Expenses.** The lessor shall in no way be held liable for expenses incurred by the lessee connected with the activities directly or indirectly related to this authorization, whether a lease is ultimately issued or not.
- 5) **Waiver of Forbearance.** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the lessee, unless in writing,

shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.

- 6) **Severability Clause.** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 7) **Indemnification.** Lessee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this EA, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this EA. Lessee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by lessee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, lessee shall accept any such cause, action or proceeding upon tender by the State. This indemnification obligation shall survive the termination or expiration of the EA. Lessee shall require all sublessees to provide equivalent indemnification to the State of Alaska for their activities.

During any time that the Lessee is an agency or a public corporation of the State of Alaska, the Lessee's indemnity obligations under this Section of the EA, to the extent they require any expenditure of funds, shall be subject to an appropriation from the Alaska legislature that can be used for that purpose.

- 8) **Preference Right.** No preference right for subsequent authorizations is granted or implied by this authorization.
- 9) **Valid Existing Rights.** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
- 10) **Reservation of Rights.** DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization.
- 11) **Public Access.** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The lessee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
- 12) **Public Trust Doctrine.** The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.

- 13) **Other Authorizations.** The issuance of this authorization does not alleviate the necessity of the lessee to obtain authorizations required by other agencies for this activity.
- 14) **Alaska Historic Preservation Act.** The Alaska Historic Preservation Act, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the lessee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
- 15) **Subleasing.** The leased parcel may not be subleased without DMLW's approval. DMLW reserves the right to require an increased annual compensation as a condition of a sublease approval. Said increase shall be determined by negotiation between the lessee and DMLW but shall not be less than 25% of all compensation paid annually to the lessee by the sublessee; failure of the parties to agree on additional sublease compensation is adequate reason for DMLW to deny approval of the sublease. The annual EA/lease rental pertaining to AS 38.05.075 and based on the appraised market value of the lease pertaining to AS 38.05.840 will not be reduced or adjusted as a result of any sublease terms or sublease compensation made to DMLW. "Sublease" includes any lease, sublease, rental, storage, use, or accommodation agreement between the lessee and another individual, business or corporation utilizing or benefiting from the leased parcel. "Sublessee" shall be defined to mean any individual, business, corporation, or other entity executing an agreement, as described above, with the lessee. The amount of sublease compensation shall be subject to change at the same time as the lease compensation adjustment and whenever the terms or conditions of the agreement between the lessee and sublessee change. Approval of a sublease shall also be conditioned upon:
- a) the lessee is in full compliance with EA conditions and is in good standing with all other authorizations per 11 AAC 96.145;
 - b) submission by the lessee of a copy of the agreement(s) which will govern the relationship and compensation provisions between the lessee and sublessee; failure of lessee to provide complete, true and accurate information regarding sublease compensation will, at lessor's discretion, be grounds for termination of the EA;
 - c) submission by the lessee of a proposed plan of operations and development for the subleased area and, if necessary, an amended plan of operations and development for the entire leased parcel; and
 - d) a best interest finding by DMLW and amendments to the EA and any subsequent lease, as necessary, if significant changes to the use and development are proposed.

Notwithstanding other requirements described in the EA and additional stipulations, assignments or subleases shall be restricted to those entities which are also eligible to obtain a lease under the same statutory authority for which the lease was approved.

- 16) **Assignment.** This EA may be transferred or assigned to another individual, business, or corporation with prior written approval from the AO. Any assignment approved by the AO and accepted by the assignee will substitute the assignee in the name, place, and stead of the lessee under ADL 421055 for this EA and any subsequently issued lease and, unless the AO specifically notes otherwise in the approval, will relieve the lessee of further rights or obligations under this EA and any subsequently issued lease.

- 17) **Performance Guaranty.** A Performance Guaranty must be obtained before any development and before approval of any development plan on the site, whether the development or development plan is proposed by the lessee or a sublessee. DNR will accept an appropriate Performance Guaranty from a sublessee, but at any time the lessee may be required to supplement or replace any Performance Guaranty required from a sublessee. Such performance guaranty shall remain in effect for the term of this EA and shall secure performance of the lessee's obligations hereunder. The amount of the performance guaranty may be adjusted by the AO as a condition of approval of amendments to this authorization or changes in the development plan, and upon any change in the activities conducted, or performance of operations conducted on the premises. If lessee fails to perform the obligations under this EA, the State may perform lessee's obligations at lessee's expense. Lessee agrees to pay within 20 days following demand, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the lessee to comply with the terms of this EA. The provisions of this EA shall not prejudice the State's right to obtain a remedy under any law or regulation. If the authorized officer determines that the lessee has satisfied the terms and conditions of this authorization the performance guaranty may be released. The performance guaranty may only be released in a writing signed by the AO.
- 18) **Insurance.** The lessee shall secure or purchase at its own expense, and maintain in force at all times during the term of this EA, the following insurance policies to protect both the lessee and the lessor (the State, its officers, agents and employees). If the lessee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the AO as noted below and must provide for a 60-day notice to the State of Alaska of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The lessee must provide a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish a current Certificate of Insurance or lapse of the policy are material breaches of this EA and shall be grounds, at the option of the State, for termination of the EA. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21.

Commercial General Liability Insurance. Prior to the issuance of this EA, lessee must obtain and provide a Certificate of Insurance for commercial general liability insurance to DMLW. Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence. The policy shall be written on an "occurrence" form and shall not be written on a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the lessee on or in conjunction with the permitted premises, referred to as ADL 421055.

Pollution Liability Insurance. Lessee must obtain and provide a Certificate of Insurance for Pollution Liability Insurance to DMLW before any use or development of and before approval of any development plan on the leased parcel, whether the use, development, or development plan is proposed by lessee or a sublessee. DNR will accept Pollution Liability Insurance from a sublessee that meets the requirements herein, but at any time and in DNR's discretion, lessee may be required to supplement or replace any Pollution Liability Insurance provided by a sublessee.

Such policy shall have minimum coverage limits of \$1,000,000.00 combined single limit per occurrence. The policy shall be written on an "occurrence" form and shall not be written on a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named

insured on the policy with respect to the operations on or in conjunction with the permitted premises, referred to as **ADL 421055**.

19) Fuel and Hazardous Substances.

- a) **Secondary containment.** Impermeable secondary containment, capable of containing 110% of the capacity of the largest independent container, is required for any fuel on site.
- b) **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the lessee's name using paint or a permanent label.
- c) **Fuel or hazardous substance transfers.** Secondary containment or a surface liner must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons. Transfer operations shall be attended by trained personnel at all times.

Vehicle refueling shall not occur within the annual floodplain or tidelands. This restriction does not apply to water-borne vessels provided no more than 30 gallons of fuel are transferred at any given time.

- d) **Storing containers within 100 feet of waterbodies.** Containers with a total capacity larger than 55 gallons which contain fuel or hazardous substances shall not be stored within 100 feet of a waterbody.
- e) **Spill kits.** Spill kits shall be present at the project site at all times.
- f) **Refueling.** No refueling or transfer of fuels or hazardous substances is to take place on the tundra or near any water bodies and wetlands.

20) Notification of Discharge. The lessee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the lessee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-7500, fax (907) 269-7687; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. For discharges in state off shore waters call (907) 269-0667. The DEC oil spill report number outside normal business hours is (800) 478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8503; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email sero@alaska.gov, (907) 465-3400. The lessee shall supply the AO with all incident reports submitted to DEC.

- 21) **Destruction of Markers.** The lessee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The lessee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the lessee's expense in accordance with accepted survey practices of the DMLW.
- 22) **Fire Prevention, Protection and Liability.** The lessee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the lessee's personal property and is not responsible for forest fire protection of the lessee's activity. To report a wildfire, call 911 or 1-800-237-3633.
- 23) **Site Maintenance.** The leased parcel shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.
- 24) **Maintenance of Improvements.** The lessor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the lessor is to be construed as assumption of responsibility.
- 25) **Disposition of Improvements and Chattels After Termination.** AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leased parcel after expiration, termination or revocation. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leased parcel and the site restored to its original condition at the lessee's sole expense or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor and may be required to pay rent on any improvements or chattels left on the leased parcel in accordance with 11 AAC 58.680.
- 26) **Solid Waste.** All solid waste and debris generated from the activities conducted under this authorization shall be removed to a facility approved by the DEC prior to the expiration, completion, or termination of the authorization or activities. Temporary storage and accumulation of solid waste (prior to its removal) shall conform to the following:
- a) Solid waste shall be stored in a manner that prevents a litter violation under AS 46.06.080;
 - b) Putrescible wastes (material that can decompose and cause obnoxious odors) shall be stored in a manner that prevents the attraction of or access to wildlife or disease vectors; and
 - c) The premises shall be maintained free of solid waste that might create a health or safety hazard.
- 27) **Wastewater Disposal.** Disposal of wastewater from any operation associated with this authorization must satisfy the requirements of the DEC.
- 28) **Corrective Work Actions and Violations.**
- a) Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations. Work at the area subject to the Directive may continue while implementing the corrective action. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by DNR.

- b) This authorization may be revoked upon violation of any of its terms, conditions, or stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes and regulations (federal and state). A revocation may not become effective until 60 days after the lessee has been notified in writing of the violation during which time the lessee has an opportunity to cure any such violation, unless such violation presents an immediate health or safety hazard.
- c) Should any unlawful discharge, leakage, spillage, emission, or pollution of any type occur due to lessee's, or its employees', agents', contractors', subcontractors', licensees', or invitees' act or omission, lessee, at its expense, shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

29) **Site Restoration.** The site shall be restored to a condition acceptable to the AO within a reasonable time if this EA expires without a lease being issued or is terminated or revoked.

30) **Completion Report.**

- a) A completion report shall be submitted within 30 days of expiration without a lease being issued, termination, or revocation of the authorized activities. The report shall contain the following information:
 - i) A report covering any known incidents of damage to the vegetative mat and underlying substrate, and follow-up corrective actions that may have taken place while operating under this authorization.
 - ii) Photographs of the site taken before, during and after the proposed activity to document authorization compliance. Photographs must consist of a series of aerial view or ground level view photos that clearly depict compliance with site cleanup and restoration guidelines.
- b) Failure to submit the required report may subject the site to a final field inspection. The lessee may be assessed a fee for this inspection.
- c) The performance guaranty will not be released until a satisfactory completion report has been received and approved.

31) **Entry Authorization.** In the case of issuance of an EA pending issuance of a final authorization, lessee agrees to remove any improvements and to rehabilitate the area to a condition acceptable to the AO as provided above if the final lease is not issued or the lessee fails to complete the lease process within the term of this EA. Lessee also understands that entry is undertaken at his/her own risk in the event that the final authorization is not issued.

32) **Entry Authorization Extensions.** Any request for EA extension will be considered upon receipt of a written request received prior to the expiration of the EA, the required filing fee, and any additional required documents. Any extension may be granted or denied in the discretion of the AO.

33) **Survey.** Prior to expiration of this EA, and as a condition of issuance of a subsequent lease, an Alaska State Land Survey (ASLS) will be required for review and approval by both the DNR Statewide Platting Officer and the North Slope Borough, which is the platting authority. The survey must be approved prior to the expiration of the EA for construction. The survey must be

performed by an Alaskan Registered Land Surveyor under survey instructions issued by the DMLW Land Survey Unit. The lessee is responsible for the costs of survey and platting.

- 34) **EA/Lease Compensation.** As directed in 11 ACC 58.410, the minimum annual rent for the lease of State land is \$1,000. The annual rent for this Negotiated Lease EA is \$104,000. The EA/lease compensation is due prior to issuance of the EA and on the anniversary of the issuance day each year.

In accordance with AS 38.05.105, the EA/Lease compensation is subject to adjustment by the lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

- 35) **Late Payment Penalty Charges.** The lessee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
- 36) **Returned Check Penalty.** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
- 37) **Request for Information.** The AO, at any time, may require the lessee to provide any information directly or indirectly related to this authorization, in a manner prescribed by the AO.
- 38) **Failure to Pay.** Failure to pay annual fees when due is a default of the terms and conditions of this EA.
- 39) **Development Plan.** Development or use shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The lessee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 40) **Amendment or Modification.** The lessee may request an amendment or modification of this authorization; the lessee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization as a condition of approval.
- 41) **Inspections.** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the lessee is found to be in noncompliance, the authorized area may be subject to reinspection. The lessee may be charged for actual expenses of any inspection.
- 42) **Use Agreement.** Because this EA and any subsequent lease are being issued subject to an existing oil and gas lease and an existing pipeline right-of-way lease to third parties, which leases affect the leased parcel, it is recommended that the lessee and those third parties enter into and maintain a Use Agreement between the parties that provides for coordination between the parties to ensure reasonable concurrent use and to minimize interference with oil and gas/pipeline operations and infrastructure. The lessee shall provide a current copy of any agreement to the AO upon request.

- 43) **Gravel/Fill Placement Materials.** Fill material, gravel, and pavement, including building pads, parking areas, driveways, and similar structures, that are or were placed on the leased parcel by the lessee, its contractors, agents, predecessors, or successors, become a part of the realty and property of the state upon expiration or termination of this EA and any subsequently issued lease, and may not be removed from the leased parcel by the lessee without the prior written approval of the lessor. All such improvements must be maintained by the lessee during the term of this EA and any subsequently issued lease, and lessee shall not be entitled to any compensation or reimbursement associated with such improvements.
- 44) **Eligibility for Assignment or Sublease.** Notwithstanding other requirements described in this EA or the lease agreement, assignments or subleases shall be restricted to those entities which are also eligible to obtain a lease under AS 38.05.070.
- 45) **Termination of Leasehold Interest.** Failure to provide the required deliverables as described above and within the timeframe identified for the EA may be considered cause for termination of this EA or any leasehold interest.

Advisory Regarding Violations of the Entry Authorization Guidelines: A person who violates a condition of an authorization is subject to any action available to the Department of Natural Resources (DNR) for enforcement and remedy, including revocation, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. DNR may seek damages available under civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735, for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

If a person responsible for an unremedied violation or a condition of an authorization applies for a new authorization from DNR under AS 38.05.035, DNR may require the applicant to remedy the violation as a condition of the new authorization, or to begin remediation and provide security to complete the remediation before receiving the new authorization. If a person who applies for a new authorization under AS 38.05.035 has previously been responsible for a violation of a condition of an authorization issued under this chapter, whether remedied or unremedied, that resulted in substantial damage to the environment or to the public, DNR will consider that violation in determining the amount of the security to be furnished and may require the applicant to furnish three times the security that would otherwise be required.

Any correspondence on this EA may be directed to the Department of Natural Resources, Division of Mining, Land and Water, Northern Region Office, 3700 Airport Way, Fairbanks, Alaska 99709-4699 telephone (907) 451-2740.

Signature page follows

I have read and understand all of the foregoing and attached stipulations. By signing this EA, I agree to conduct the authorized activity in accordance with the terms and conditions of this EA.

INVOICE

I also acknowledge that upon execution of this EA by the AO, the fully executed EA is an invoice to AIDEA for the amount of **\$531,750**, due and payable within 60 days of the date of the AO's signature, pursuant to the Gravel Payment Agreement signed by AIDEA on _____, 2019.

Alaska Industrial Development and Export Authority

By _____

Signature of Lessee

Title

Date

Address

Phone

Contact Name

Alaska Department of Natural Resources, DMLW

By _____

Signature of Authorized Officer

Title

Date

Attachment A – Record of Survey, EPF 20180025

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Additional Lease Stipulations

In addition to the terms of the lease listed within the lease document, the following stipulations will be incorporated as part of the lease. The AO reserves the right to modify the following stipulations or include additional stipulations as necessary prior to lease issuance.

1. **“Lessee.”** as used in the lease and these Stipulations, shall expressly include Lessee’s predecessors, successors in interest, and assigns.

2. **Authorized Officer.** The Authorized Officer (AO) for the Department of Natural Resources is the Regional Manager or designee. The AO may be contacted at 3700 Airport Way, Fairbanks, Alaska 99709 or 907-451-2740. The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary.

3. **Preference Right.** No preference right to a subsequent long-term lease is granted or implied by issuance of this lease.

4. **Modifications to Development Plan.** Section 4 of the lease is hereby amended to include the following: To adequately address any future development, use, or additions to the Development Plan, the Lessee will be required to provide advance written notice to the AO for approval of any modification prior to construction or change in use. The AO reserves the right to re-evaluate the lease compensation and other terms and conditions of the lease prior to approving any modification to the development plan. Based upon the extent of the modifications, a survey and appraisal may be required at the Lessee’s expense. No changes are approved unless specifically authorized in writing by the AO.

5. **Specific Land Use.** Section 4 of the lease is hereby amended to include the following: This lease is issued for a specific use and development plan, and use of the area for purposes other than those specified constitutes a breach of the lease agreement and may result in revocation. The lease may be terminated upon a finding by the AO that the land or a part of it has not been used by the Lessee for the purpose specified in the lease for a period of two years. The lease cannot be assigned or subleased except with the consent of the AO. A Lessee may not change the use specified in the lease to another or additional use except with the consent of the AO. Any attempts to depart from these conditions without the consent of the AO will cause the lease to automatically be terminated.

6. **Waste and Debris Disposal.** Section 4 of the lease is hereby amended to include the following: On-site refuse disposal is prohibited. All waste generated during operation, maintenance and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and discarded equipment. The site must be kept clean at all times.

7. **Site Disturbance.** Section 4 of the lease is hereby amended to include the following: The Lessee, its contractors, and sub-contractors shall take all reasonable precautions to prevent water pollution, erosion, or sedimentation on or in the vicinity of the leased area.

a) Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Any ground disturbances that may occur shall be contoured to blend with the natural topography to protect human and wildlife health and safety. Particular attention must be paid to preventing pollution and siltation of any waterways and to preventing disturbances to fish and wildlife populations and habitats.

b) Fire. The Lessee shall take all reasonable precautions to prevent, and all reasonable actions to suppress; forest, brush and grass fires. The Department of Natural Resources does not assume

any responsibility for protecting any temporary improvements or personal property in cases of grass, brush, or forest fires.

8. **Assignment.** Section 6 of the lease is hereby amended to include the following: In the event the Lessee desires to transfer their interest in the lease to another party, the Lessee shall submit to the AO a request for assignment and a copy of a draft agreement which identifies the provisions of the assignment between the parties. If the assignment changes the type or level of use such that new lease compensation or stipulations are necessary to protect the Lessor's interest, the AO reserves the right to require/renege new terms or conditions for the lease prior to and as a condition of approving any assignment. The AO reserves the right to require an assignment between the Lessee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change involving the leased site.

Any assignment approved by the AO and accepted by the assignee will substitute the assignee in the name, place, and stead of the lessee under ADL 421055 for this lease and, unless the AO specifically notes otherwise in the approval, will relieve the lessee of further rights or obligations under this lease.

9. **Relinquishment.** The lease may be relinquished if it is in good standing (rental payments are current and Lessee is in compliance with all other conditions and stipulations), the Lessee files a written relinquishment form certifying the condition of the parcel, and the Lessor accepts the relinquishment. Provided that the lease site is in good standing and free of contamination, Lessor's acceptance of the relinquishment shall not be unreasonably withheld. Lease rental payments are non-refundable regardless of whether the lease is relinquished or terminated for cause.

10. **Subleasing.** Section 6 of the lease is hereby amended to include the following: The leased parcel may not be subleased without AO approval. The AO reserves the right to require an increased annual compensation as a condition of a sublease approval. Said increase shall be determined by negotiation between the Lessee and AO, but shall not be less than 25% of all compensation paid annually to the Lessee by the Sublessee; failure of the parties to agree on additional sublease compensation is adequate reason for DMLW to deny approval of the sublease. The annual EA/lease rental pertaining to AS 38.05.075 and based on the appraised market value of the lease pertaining to AS 38.05.840 will not be reduced or adjusted as a result of any sublease terms or sublease compensation made to AO. "Sublease" includes any lease, sublease, rental, storage, use, or accommodation agreement between the lessee and another individual, business or corporation utilizing or benefiting from the leased parcel. "Sublessee" shall be defined to mean any individual, business, corporation, or other entity executing an agreement, as described above, with the lessee. The amount of sublease compensation shall be subject to change at the same time as the lease compensation adjustment and whenever the terms or conditions of the agreement between the Lessee and Sublessee change. Approval of a sublease shall also be conditioned upon:

- a) the Lessee is in full compliance with lease conditions and is in good standing with all other authorizations per 11 AAC 96.145;
- b) submission by the Lessee of a draft copy of the agreement(s) which will govern the relationship and compensation provisions between the Lessee and Sublessee; failure of Lessee to provide complete, true and accurate information regarding sublease compensation will, at Lessor's discretion, be grounds for termination of the lease;
- c) submission by the Lessee of a proposed plan of operations and development for the subleased area and, if necessary, an amended plan of operations and development for the entire lease area; and;
- d) a best interest finding by the AO and amendments to the lease contract as necessary, if significant changes to the use and development are proposed.

Notwithstanding other requirements described in the lease agreement and additional stipulations, assignments or subleases shall be restricted to those entities which are also eligible to obtain a lease under the same statutory authority for which this lease was issued.

11. Inspections. Section 13 of the lease is hereby amended to include the following: The AO may designate representatives and other personnel to inspect the leased area at any time. Non-compliance determinations will subject the site to re-inspection for which the Lessee may be assessed, at the AO's discretion, either a fee of \$100 or a fee equal to the actual expenses incurred by the Division of Mining, Land and Water (11 AAC 05.010).

12. Concurrent Usage. Section 15 of the lease is hereby amended to include the following: The AO reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land covered under this authorization. Authorized concurrent users of state land, their agents, employees, contractors, subcontractors and licensees shall not interfere with the operation or maintenance activities of other authorized users. Any future concurrent permit, lease or sublease will be subject to the conditions and stipulations contained in the lease, including the additional collection of fees or rents by the AO from any subordinate Lessee or Sublessee.

13. Violations. Section 21 of the lease document is hereby amended to include the following: Per 11 AAC 96.145, the Lessee must be in compliance with provisions of this and other authorizations granted under AS 38.05 or 11 AAC 96 before a new authorization may be granted by DNR. This lease authorization may be terminated upon violation of any of its terms, conditions, stipulations or upon failure to comply with any applicable state, federal and local laws, statutes and regulations.

14. Indemnification. Section 23 of the lease is hereby amended to include the following:

Lessee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this lease, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this lease. Lessee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Lessee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, Lessee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the lease.

During any time that Lessee is an agency or a public corporation of the state of Alaska, the Lessee's indemnity obligations under this Section of the Lease, to the extent they require any expenditure of funds, shall be subject to an appropriation from the legislature that can be used for that purpose.

15. Insurance. As per section 24 the Lessee shall secure or purchase at its own expense, and maintain in force at all times during the term of this lease, the following policies of insurance to protect both the Lessee and the Lessor (the State, its officers, agents and employees). If the Lessee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the AO prior to the issuance of this lease and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Lessee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this lease and shall be grounds, at the option of the State, for termination of the lease. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. The policy shall be written on an "occurrence"

form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the Lessee on or in conjunction with the leased premises, referred to as [REDACTED] [Case Number].

Commercial General Liability Insurance, such policy shall have minimum coverage limits of \$ [REDACTED] combined single limit per occurrence.

16. Performance Guaranty. As per section 25 of the lease the Lessee must post a performance guaranty in the amount of [REDACTED] to secure faithful performance with all terms and condition of the lease and to insure site restoration of the leasehold. The performance guarantee must remain in effect for the duration of the lease term or until released in writing by the AO.

Failure by the Lessee to provide replacement security, upon notice of non-renewal of an existing form of security, shall be grounds for the AO to make a claim upon the existing security to protect the Lessor's interests.

The guaranty amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments to the lease, assignments, re-appraisals, changes in the development plan, approval of a reclamation plan, any change in the activities conducted or performance of operations conducted on the leased premises and as a result of any violations to the lease agreement.

The guaranty may be utilized by the AO to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the Lessee does not comply with the site utilization, restoration requirements and/or other stipulations contained in the lease agreement. If the Lessee fails to perform the obligations under the lease agreement within a reasonable timeframe, the AO may perform the Lessee's obligations at the Lessee's expense. The Lessee agrees to pay within 20 days following demand, all costs and expenses reasonable incurred by the State of Alaska as a result of the failure of the Lessee to comply with the terms and conditions of the lease agreement. The provisions of these authorizations shall not prejudice the State's right to obtain a remedy under any law or regulation.

The performance guaranty will be released upon expiration of the lease provided that all terms and conditions of the lease have been met, including complete removal and restoration of the leased area leaving the site in a safe and clean condition.

17. Environmental Provisions: Section 26 of the lease is hereby amended and replaced with the following provisions.

SECTION 26. ENVIRONMENTAL ISSUES

A. Definitions for Section 26, Environmental Issues:

Affected Property – Any property adjacent to the Leasehold that contains Contamination in, on, or under the surface, including groundwater.

Contamination – The unpermitted presence of any Released Hazardous Substance.

Environmental Assessment – An assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of a property and the presence, type, concentration, and extent of any Contamination in, on, and under the surface of the property.

Environmental Law – Any federal, state, or local statute, law, regulation, ordinance, code, permit, order, decision, or judgment from a governmental entity relating to environmental matters. It includes, but is not limited to, AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); 18 AAC (Environmental Conservation) implementing AS 46; 42 U.S.C. §§ 7401-7671 (Clean Air Act); 33 U.S.C. §§ 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. §§ 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. §§ 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); and 15 U.S.C. §§ 2601-2692 (Toxic Substances Control Act).

Environmental Liability Baseline – A description, accepted by the Lessor and documented by one or more Environmental Assessments and any other relevant documents, of the existence, location, level, and extent of Contamination in, on, or under the surface of the Leasehold that was neither caused nor Materially Contributed To by the Lessee, nor otherwise assumed by the Lessee.

Hazardous Substance – Any substance that is defined under an Environmental Law as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.

Leasehold – The real property defined in Section 1 of this lease.

Materially Contribute To – To significantly add to or make worse, including by inaction, the Release or migration of a Hazardous Substance.

Release – means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

- (a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and
- (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.

- B. Compliance with Laws. Lessee shall comply with all Environmental Laws relating to the handling, use, generation, accumulation, storage, transportation, disposal, release, treatment or sale of Hazardous Substances in, on or under the Leasehold.
- C. Lease Site Condition/Potential Contaminants. Lessee has the sole responsibility under this lease to ascertain the environmental condition and presence of Contamination in, on, or under the surface of the Leasehold. Lessor makes no representations and no warranties, express or implied, concerning the existence or absence of any Hazardous Substances or Contamination on the Leasehold. Lessor does not assume any liability for the removal of Hazardous Substances, nor for the remediation of the Leasehold and any Affected Property should such substances be found.
- D. Environmental Liability Baseline. Lessee is conclusively presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Leasehold. Lessee may establish an Environmental Liability Baseline that will serve as a benchmark for the condition of the Leasehold as of the effective date of the lease and as a reference for the Clearance Assessment in Subsection I, below. Lessee will not be presumed to have caused or to have Materially Contributed To any Contamination of, or originating on, the Leasehold identified in the Environmental Liability Baseline. Lessee is responsible for the acts or omissions of its employees, agents, invitees, sublessees, contractors and guests on the Leasehold, and Contamination caused or Materially Contributed To by activities of the Lessee's employees, agents, invitees, sublessees, contractors and guests on the Leasehold are deemed to be caused by or Materially Contributed To by the Lessee. Lessee shall be solely responsible for any and all costs associated with conducting the Environmental Assessment and/or establishment of the Environmental Liability Baseline.

- a. Notice of Environmental Assessment. If the Lessee decides to add to or establish an Environmental Liability Baseline for all or any portion of the Leasehold or Affected Property during the term of the lease, or any renewal or assignment, if applicable, thereof, the Lessee shall notify the Lessor of the intent to conduct an Environmental Assessment for that portion of the Leasehold or Affected Property. The Lessee shall provide a description of activities for conducting the Environmental Assessment. The Lessee shall provide Lessor with the final Environmental Assessment report.
- b. Establishing an Environmental Liability Baseline.
 - i. If the Lessee discovers Contamination in, on, under the surface of, or emanating from, the Leasehold, for any portion of the Contamination to be considered for inclusion in the Environmental Liability Baseline, the Lessee must demonstrate to the satisfaction of the Lessor that the Contamination proposed for inclusion was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee. Contamination caused or Materially Contributed To by activities of the Lessee's employees, agents, invitees, sublessees, contractors and guests on the Leasehold are deemed to be Materially Contributed To by the Lessee.
 - ii. Only that portion of Contamination not caused or Materially Contributed to by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee, shall be included in the Environmental Liability Baseline.
 - iii. Lessee is responsible for inspecting the Leasehold and reporting, in writing, any evidence of conditions on the Leasehold as of the effective date of the lease, which differ from the conditions reported in the Environmental Liability Baseline. By entering into the lease, Lessee expressly accepts the Leasehold and acknowledges that notwithstanding the provisions of the Environmental Liability Baseline, the Leasehold may contain Hazardous Substances not mentioned in the Environmental Liability Baseline.
- c. Adding to an Existing Environmental Liability Baseline.
 - i. If, after an Environmental Liability Baseline is established for any portion of the Leasehold or Affected Property, the Lessee discovers Contamination in, on, under the surface of, or emanating from, that portion of the Leasehold having an Environmental Liability Baseline, which Contamination the Lessee or the Lessee's operations or activities did not cause or Materially Contribute To, and which the Lessee did not otherwise assume, the Lessee may, at its own cost, submit an additional Environmental Assessment reflecting that information to the Lessor for the Lessor's consideration to add to the Environmental Liability Baseline. The Lessee's additional Environmental Assessment must demonstrate to the satisfaction of the Lessor which portion of the additional Contamination on the Leasehold or Affected Property was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities nor otherwise assumed by the Lessee.
 - ii. Only that portion of Contamination not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee, may be added to the existing Environmental Liability Baseline.
- d. Lessor's Acceptance or Rejection of Lessee's Environmental Assessment. When the Lessor receives the Lessee's Environmental Assessment to establish an Environmental Liability Baseline or to add to an existing Environment Liability Baseline, the Lessor, in its sole discretion, will do one of the following:
 - i. Accept the findings of the Lessee's Environmental Assessment and any other relevant documents to establish an Environmental Liability Baseline for that portion of the Leasehold or Affected Property being assessed or to add to the existing Environmental Liability Baseline;
 - ii. Reject the findings of the Lessee's Environmental Assessment for that portion of the Leasehold being assessed and offer the Lessee the opportunity to perform additional environmental testing if the Lessor determines, in writing, that the findings of the Environmental Assessment are inadequate to establish an Environmental Liability Baseline or to add to an existing Environmental Liability Baseline. The Lessor's written rejection of

the Lessee's Environmental Assessment will be based on failure of the Lessee's Environmental Assessment to either:

1. follow generally accepted professional practices in determining the environmental condition of the Leasehold or the Affected Property and the presence of Contamination in, on, or under the surface of, or emanating from, the Leasehold; or
 2. demonstrate to Lessor's satisfaction the portion of the Contamination that was not caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, nor otherwise assumed by the Lessee; or
- iii. Perform additional environmental testing at the Lessor's expense to verify the environmental condition of that portion of the Leasehold being assessed. If the results of the Lessor's tests conflict with the Lessee's Environmental Assessment, the Lessor and the Lessee will negotiate in good faith an Environmental Liability Baseline or an addition to the existing Environmental Liability Baseline for the portion of the Leasehold or Affected Property being assessed.
- e. Amending the Environmental Liability Baseline to Delete Contamination Caused, Materially Contributed To or Assumed by Lessee. If, after the Environmental Liability Baseline for any portion of the Leasehold or Affected Property is established, it is discovered that the presence of Contamination identified in the Environmental Liability Baseline was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities, or otherwise assumed by the Lessee, the Environmental Liability Baseline will be amended to delete that portion of the Contamination that was caused or Materially Contributed To by the Lessee or the Lessee's operations or activities or otherwise assumed by the Lessee.

E. Notice of Hazardous Substance Release. Lessee shall give notice to Lessor promptly after learning of any Release of any Hazardous Substance on or at the Leasehold or surrounding environment. This notice shall include a description of the Release, measures taken or proposed to be taken by Lessee to contain and/or remedy the Release, and any resulting damage to property, persons or the environment. At Lessee's own expense, Lessee shall promptly take all steps necessary to contain and remedy any Release of Hazardous Substances in, on or under the Leasehold or surrounding environment, and all resultant damage or injury to property, persons and the environment (the "Response Action"). Lessee shall be responsible for reporting and coordinating the Response Action with the Alaska Department of Environmental Conservation and/or any other federal, state, or local agency with jurisdiction (collectively, the "Regulator"). Lessee shall provide Lessor with not less than seven days to review and comment on any submittal to a Regulator made as part of a Response Action prior to submission. Upon request by Lessor, Lessee shall provide Lessor copies of any and all documents arising from or related to the Response Action including, but not limited to, any and all communications by Lessee to a Regulator.

F. Lessor's Right to Perform Testing. At any time, and from time to time, prior to the expiration of the Lease, Lessor shall have the right, but not obligation, to conduct appropriate tests of the Leasehold or any portion thereof to determine whether Contamination has occurred provided, however, that (a) all such testing shall be conducted at Lessor's sole cost and expense except as set forth in the next sentence, (b) Lessor shall coordinate testing activities with the Lessee and shall, to the extent practicable, minimize the impact of testing on the Lessee, (c) Lessor shall promptly repair any physical damage caused by such testing and restore the Leasehold to substantially the same physical condition it was in immediately prior to such testing, and (d) the Lessor shall not be held liable for any damages, whether direct or indirect, incurred by Lessee as part of the testing. Lessee shall pay all reasonable costs of such tests if such tests reveal that Hazardous Substances exist on the Leasehold due to the acts or omissions of Lessee in violation of state or federal Environmental Laws.

G. Financial Responsibility for Contamination on the Leasehold and on Any Affected Property. The Lessee assumes financial responsibility to the Lessor for any Contamination in, on, and under the Leasehold and any Affected Property, except for Contamination that is identified in an

Environmental Liability Baseline. Lessee shall be responsible for all costs incurred by Lessor to enforce these environmental provisions, including but not limited to action(s) to force Lessee to address a Release of Contamination at the Leasehold or Affected Property, and all attorneys' fees and other costs of such action(s). This is without prejudice to the Lessee's right to seek contribution or indemnity from either prior lessees of the Leasehold and Affected Property, or other potentially responsible parties except for the Lessor.

- H. Environmental Indemnification. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, demands, damages, costs, fees, penalties, and charges asserted against, imposed upon, and incurred by Lessor (including fees and costs of attorneys, consultants, laboratory testing charges and personal injury claims) as a result of (a) the handling, use, generation, accumulation, storage, transportation, disposal, treatment and/or sale of Hazardous Substances at or from the Leasehold; (b) the release of any Hazardous Substance on, at or from the Leasehold which is attributable to any act or omission of Lessee, or its employees, agents, invitees, sublessees, contractors and guests; (c) the failure of Lessee, or its employees, agents, invitees, sublessees, contractors and guests, to comply with any Environmental Laws; (d) Lessee's failure to remove all Hazardous Substances or decontaminate, decommission, or, if appropriate, sterilize all areas in the Leasehold and any Affected Property in which any of Hazardous Substances were generated, stored, handled, accumulated, or released; and (e) Lessee's failure to comply with any other requirement of this Section. This environmental indemnification is in addition to the indemnification provided for under Section 23 of the Lease.

During any time that Lessee is an agency or a public corporation of the state of Alaska, the Lessee's indemnity obligations under this Section of the Lease, to the extent they require any expenditure of funds, shall be subject to an appropriation from the legislature that can be used for that purpose.

- I. Environmental Report Upon Expiration or Termination of Lease. Two months prior to Lessee's surrender of possession of any part of the Leasehold, or the expiration or termination of this Lease, Lessee shall provide Lessor with copies of all environmental reports necessary for Lessor to determine whether the Leasehold may contain any Hazardous Substances other than those, if any, that were identified in the Environmental Liability Baseline. If reports indicate the presence of Hazardous Substances, then Lessee shall also provide Lessor with (a) a written assessment addressing any potential releases of Hazardous Substances handled on the Leasehold during the term of the Lease to the workplace, soils, sewers, drywells, surface water, or groundwater, and any threats to human health or the environment posed by Lessee's operations (the "Clearance Assessment"); the scope of the Clearance Assessment must be approved by Lessor, such approval not to be unreasonably withheld, and will include provisions complying with the standards for Phase I and II Environmental Site Assessment as specified by the ASTM standard in effect at the time or any successor standards published by ASTM International (formerly known as the American Society for Testing and Materials) or any successor organization (or, if ASTM International and its successors no longer exist, a similar entity publishing similar standards); (b) written evidence that all appropriate governmental notifications have been made or releases requested as may be required by laws in effect at that time, including laws pertaining to Releases of Hazardous Substances and the surrender of the Leasehold; and (c) a plan to address any further lease requirements or Contamination which are Lessee's responsibility under this Section. In addition, Lessee agrees to remain responsible after the surrender of the Leasehold for the remediation of any Contamination that Lessee is otherwise responsible for pursuant to this lease, to comply with any recommendations regarding such Contamination, and to continue to pay rent and insurance until the Lessee provides evidence acceptable to Lessor that all Contamination, if any, then present on the Leasehold and any Affected Property are below reportable levels under state and federal laws. Lessee's obligations under this Article shall survive the expiration or earlier termination of the lease.

- J. Removal of Hazardous Substances prior to Expiration or Termination of Lease. At least 10 days prior to termination of this lease, Lessee shall remove all Hazardous Substances which have been stored, or released onto or from, the area to be vacated and shall decontaminate vacated areas in the Leasehold in which Hazardous Substances were generated, stored, accumulated, released, or otherwise present. If Hazardous Substances were stored in tanks or containers, Lessee shall decommission such equipment. Documentation of this removal and decommissioning shall be included in the Clearance Assessment.
- K. Action Against Potentially Responsible Parties. This article does not restrict either the Lessor or the Lessee from seeking and obtaining cleanup efforts, costs, or damages from other potentially responsible parties.
- L. Authorities of the Alaska Department of Environmental Conservation. These provisions do not in any way alter the State of Alaska, Department of Environmental Conservation's powers and rights under AS 46.03 or 18 Alaska Administrative Code (implementing AS 46.03) (or their successors) and specifically AS 46.03.822. It also does not affect Lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that Lessee is strictly liable, jointly and severally, for damages and costs incurred by the State for cleanup of Contamination on the Leasehold and any Affected Property. The obligations and provisions of this Section shall survive the termination of this lease.

18. **Fuel.** When fuel storage containers exceed a total combined capacity of 110 gallons, the containers must be stored within either, an Alaska Department of Environmental Conservation approved double walled-tank, or an impermeable diked area, or a portable impermeable containment structure capable of containing 110% of the capacity of the largest independent container. All containers must be clearly marked with the contents and the Lessee's name. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. All fuel storage containers and associated materials must be removed by the lease expiration date.

19. **Hazardous Substances** (other than fuel). Use of herbicides and pesticides by the Lessee is prohibited without prior written approval from the AO. No storage of hazardous material/substances is authorized within the project area without prior written approval from the AO.

20. **Alaska Historic Preservation Act.** The Lessee shall consult the Alaska Heritage Resources Survey (907) 269-8721 so that known historic, archaeological and paleontological sites may be avoided. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation (907) 269-8721 and shall be notified immediately.

21. **Incurred Expenses.** All expenses incurred by the Lessee connected with the exercise of the privilege covered by this authorization shall be borne solely by the Lessee and the State of Alaska shall in no way be held liable for said expenses.

22. **Limits of Access.** Access to the lease site is from via plane/helicopter or snow machine access in winter. No new access trails or roads are authorized on state land without the express permission of the AO. The ability of all users to use or access state land must not be restricted in any manner with the exception of fencing or enclosing structures to protect the public from possible harm.

23. **Public Access.** The operation, use and maintenance of the project shall not interfere with free public use of roads, trails, waters, landing areas, or other public access easements. The ability to use

or access state land or public waters must not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may authorize a temporary closure of public access routes to or through the project area for a specific period of time. The Lessee is required to contact the AO in advance for approval to close public access routes. No closures are authorized unless specifically authorized in writing by the AO.

24. Survey Monuments. The Lessee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed lease corner posts against damage, destruction, or obliteration. The Lessee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Lessee's expense in accordance with accepted survey practices of the Department of Natural Resources.

25. Compliance with Governmental Requirements; Recovery of Costs. Lessee shall, at its expense, comply with all applicable laws, regulations, rules and orders, and the requirements and stipulations included in this authorization. Lessee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.

26. Other Authorizations. The issuance of this authorization does not alleviate the necessity of the Lessee to obtain authorizations required by other agencies for this activity.

27. Change of Address. Any change of address must be submitted in writing to the AO.

28. Compliance. The Lessee shall inform and ensure compliance with these stipulations by its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this lease. The Lessee is responsible for the accurate location of all construction, operation, and maintenance activities within the area authorized under the terms of this lease.

29. Lease Expiration and Site Reclamation. No later than one (1) year prior to the lease expiration, the Lessee shall file with the AO:

a. A request for a new lease, and/or

b. A reclamation plan for the leasehold lands, which must be approved in writing by the AO. The Lessee is responsible for site reclamation within the leasehold. The reclamation plan must include a description of the methods and techniques that the Lessee will use to rehabilitate all sites affected by construction and intensive use activities. Under the lease, the Lessee retains all ownership rights to site improvements. In the plan, the Lessee shall describe its intention to remove improvements. The plan must also include a schedule that sets forth the steps required for surface rehabilitation, and a specific timeline showing when the Lessee will accomplish each step.

30. Site Restoration.

a. Upon expiration, completion, or termination of this authorization, the site shall be vacated and all improvements, personal property, and other chattels shall be removed or they will become the property of the state.

b. The site shall be left in a clean, safe condition acceptable to the AO.

c. The AO must approve a Restoration Plan at least 30 days prior to expiration, completion, or termination of this authorization, whichever is sooner. The Restoration Plan shall be in addition to any requirements for environmental compliance made a part of this lease.

d. Land returned to the Department of Natural Resources for any reason shall be returned in an environmental, physical, and marketable condition acceptable to the AO.

31. Gravel/Fill Placement Materials. Fill material, gravel, and pavement, including building pads, parking areas, driveways, and similar structures, that are or were placed on the leased parcel by the lessee, its contractors, agents, predecessors, or successors, become a part of the realty and property of the state upon expiration or termination of this lease, and may not be removed from the leased parcel by the lessee without the prior written approval of the lessor. All such improvements must be maintained by the lessee during the term of this EA and any subsequently issued lease, and lessee shall not be entitled to any compensation or reimbursement associated with such improvements.

32. FCC License/Authorization. Each communication transmitter operating under this lease shall be operated only by the holder of a current and valid FCC license. A legible copy of each applicable license shall, at all times, be posted on the cabinet or rack of each transmitter being operated. Each copy shall indicate the person or entity authorized under the license to operate the transmitter.

33. Fiber Optic Cables. This lease does not allow for the installation of fiber optic cable without the written approval of the AO and the payment of the current fiber optic cable fee.

34. Request for Data/Additional Information. For purposes of information and review, the AO at any time during normal business hours, may require the Lessee to furnish data related to the use, maintenance and operation activities undertaken in connection with this project. The Lessee shall furnish the required data as soon as possible or as otherwise required under the terms of this lease.

35. Use Agreement. Because this lease is issued subject to an existing oil and gas lease and an existing pipeline right-of-way lease to third parties, which leases affect the leased parcel, it is recommended that the lessee and those third parties enter into and maintain a Use Agreement between the parties that provides for coordination between the parties to ensure reasonable concurrent use and to minimize interference with oil and gas/pipeline operations and infrastructure. The lessee shall provide a current copy of any agreement to the AO upon request.

**State of Alaska, Department of Natural Resources
Division of Mining, Land & Water
Northern Regional Land Office**

**Alaska Industrial Development and Export Authority
Gravel Payment Agreement
ADL 421055 and ADL 419991**

This agreement is being entered into by the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water (DMLW) and the Alaska Industrial Development and Export Authority (AIDEA).

AIDEA held a lease issued under A.S. 38.35, for a parcel of land on which it constructed a gravel pad using gravel purchased from DMLW under what are known as “public and charitable” contract terms, at the reduced rate (administrative base price) of \$0.50/cubic yard of gravel with the first 5,000 cubic yards per project year free. See AS 38.05.555(b)(3) and 38.05.810. AIDEA initially qualified for this rate because the gravel was to be used for its originally proposed public purpose facility, the Interior Energy Project (IEP) LNG facility and trucking project. Gravel for projects that do not qualify for the public and charitable rate incur material costs at the Northern Region representative sales price of \$3.00/cubic yard.

Subsequently, AIDEA requested that its limited use lease under AS 38.35, including the gravel pad, be converted to a more standard lease under AS 38.05.070 so that it could use the parcel and the pad for commercial and industrial purposes (ADL 421055). Because the lease is no longer proposed to be limited to a public project by a qualifying entity, the use of the gravel will no longer qualify under the public and charitable statutes. Further, 11 AAC 71.015 prohibits conveyance of gravel purchased under AS 38.05.810 to a third party, which could prohibit an assignment or sublease of the lease. Accordingly, in order for AIDEA to have the flexibility to use the leased parcel and gravel pad for commercial or industrial uses, or sublease or assign the proposed lease (including the pad) to a third party, it must pay the difference between the representative sales price and the public and charitable price for the gravel used to construct the pad. Pursuant to the Final Finding and Decision (FFD) issued December 12, 2018 for ADL 421055, it is a condition of DMLW’s approval of the lease that AIDEA agree to pay that difference, which is \$531,750.

This Gravel Payment Agreement will eliminate the public and charitable restrictions on use of the gravel pad, and will give AIDEA the ability to convey rights to the pad to a third party in a sublease or assignment, pursuant to the terms of any EA or lease. Therefore, DMLW and AIDEA agree as follows:

1. AIDEA owes to DMLW \$531,750, plus interest as provided herein, as payment for gravel under and to be applied to material sale contract ADL 419991.
2. Issuance of the Entry Authorization (EA) for ADL 421055 will be considered an invoice to AIDEA for the amount owed as provided in Paragraph 1, above, which will be due and payable within 60 days of the date the EA is signed by DMLW.
3. If the principal balance is not paid in full within 60 days of the date the EA is signed by DMLW, then simple interest, set at the prime lending rate as reported in the Wall Street Journal on the first business day of the month in which the EA is signed by DMLW, will accrue beginning on the date the EA is signed by DMLW. All principal and accrued

Alaska Industrial Development and Export Authority
By _____
Title _____

Date: _____

Notary Public in and for the State of Alaska
Commission Expires: _____

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES**

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)ss

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, on the day and year shown.