

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. **Authorized Officer.** The Authorized Officer (AO) for the Department of Natural Resources is the Northern 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.

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

3. **Modifications to Development Plan.** Section 4 of the lease is hereby amended to include the following: To adequately address any future development 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. 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.

4. **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 part of it has not been used by the Lessee for the purpose specified in the lease for a period of one year. 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.

5. **Waste and Debris Disposal.** Section 4 of the lease is hereby amended to include the following: 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.

6. **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.

7. **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/renegotiate new terms or conditions for the lease prior to 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.

8. **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. Lessor may require Lessee to contract a third party consultant to complete a phase II environmental audit to verify that the property is free from contamination. 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.

9. **Subleasing.** Section 6 of the lease is hereby amended to include the following: 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. Neither the terms of this sublease provision nor any actual compensation derived from a sublease shall have any effect upon a determination of the annual fee pertaining to AS 38.05.07(a) or appraised market value pertaining to AS 38.05.840 and/or this lease parcel. Sublease shall be defined to include any lease, rental, storage, or accommodation agreement between the Lessee and another individual, business or corporation utilizing or benefiting from the lease parcel. Sublessee shall be defined to mean any individual, business, or corporation executing an agreement, as 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;
- 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.

10. **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 \$400 or a fee equal to the actual expenses incurred by the Division of Mining, Land and Water (11 AAC 05.160(d)(1)(C)).

11. **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.

12. **Lease Site Condition/Potential Contaminants.** The Lessee is expected to and has been given the opportunity to inspect the lease parcel and become familiar with the condition and quality of the land. The State of Alaska makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for lease. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances be found.

13. **Violations.** Section 21 of the lease document is hereby amended to include the following: the Lessee must be in compliance with provisions of this and other authorizations granted under AS 38.05 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. Should any unlawful discharge, leakage, spillage, emission or pollution of any type due to Lessee, at Lessee's expense, shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

14. **Indemnification.** Section 23 of the lease is hereby amended to include the following: [Choose one of the following.]

[Leases issued to private individuals, businesses and the Alaska Railroad. This statement is also to be used for any conveyance documents to the University of Alaska.]

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.

[This indemnification statement is to be used as is for all authorizations to federal agencies. If the specific agency disagrees with having an indemnification statement included in the authorization, remove the word indemnification and use the phrase "In lieu of indemnification" but do not change the language.]

The Lessee shall be responsible for any claim or demand for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection

with the use or occupancy of the lease site, in accordance with provisions of the Federal Tort Claims Act.

[Leases issued to the University.]

In lieu of indemnification, the Lessee shall be responsible for any claim or demand for loss or damage, including property damage, personal injury, wrongful death, and wage or employment claims, arising out of or in connection with the use or occupancy of the lease site.

[Can be included for state agencies to address contractors and subcontractors, but the agencies would normally do this in its contracts. DNR can not require State Agencies or Municipalities to sign indemnification language as they can not commit future funds due to the budget appropriation process.]

In connection with the entry on or use of assigned lands, subject to the limitations and provisions of AS 09.50.250-.270 and AS 37.05.170, the Assignee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract except when the proximate cause of the injury or damage is the State's sole negligence.

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, liability coverage and limits consistent with what is professionally recommended as adequate to protect the lessee (the insured) and lessor (the State, its officers, agents and employees) from the liability exposures of the insured's operations on state land. 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 30-day prior notice to the State before they cancel, not renew or make material changes to conditions in 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 [case number].

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 guaranty 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. Notification of Discharge. The Lessee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of any amount of oil to water, a discharge of any amount of a hazardous substance (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 must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300. Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-3528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.jro.spill@alaska.gov, (907) 465-3513. The Lessee shall supply the AO with all incident reports submitted to DEC.

18. Spill Notification. Section 26 of the lease is hereby amended to include the following: All fuel, oil, and hazardous material spills will be cleaned up and reported per 18 AAC 75.300. The Lessee is responsible for cleaning up any oil spills or other pollutants that result from activities under this lease. Any fuel, oil, or other pollutant discharge or spill shall be reported immediately to the Department of Environmental Conservation (DEC) Spill Hotline at 800-478-9300, and the Department of Natural Resources 24 hour spill report number at (907) 451-2678, FAX (907) 451-2751. Adequate sorbent materials (i.e., material that collects and absorbs petroleum products while at the same time repels water) will be kept on site to be used in the event a spill should occur.

The Lessee shall immediately notify DEC by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. 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, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. Any discharge of oil, including a cumulative discharge, solely to land greater than one gallon up to 10 gallons must be reported in writing on a monthly basis. The posting of information requirements of 18 AAC 75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also applies.

The Lessee shall supply DNR and DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-7500, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

19. Spill Response. Section 26 of the lease is hereby amended to include the following: The Lessee is responsible for preventing fuel, hydraulic fluid and oil spills that result in contamination of contiguous

land and water as well as cleaning any pollutants resulting from the proposed activities. Petroleum product spills shall be cleaned up immediately and any contaminated earth or vegetative materials shall be disposed of as required by the Alaska Department of Environmental Conservation Regulations. Should any unlawful discharge, leakage, spillage, emission or pollution of any type due to the Lessee, at its expense, shall be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

20. **Fuel.** Section 26 of the lease is hereby amended to include the following: 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, 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.

21. **Hazardous Substances** (other than fuel). Section 26 of the lease is hereby amended to include the following:

- a) Use of herbicides and pesticides by the Lessee is prohibited without written approval from the AO.
- b) No storage of hazardous material/substances is authorized within the project area without prior written approval from the AO.
- c) The use of hazardous substances/materials must be done in accordance with existing federal, state and local laws.
- d) Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the site and managed and disposed of in accordance with state and federal laws.
- e) All hazardous substance materials must be removed from the site and disposed of or managed in accordance with state and federal laws.

22. **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.

23. **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.

24. **Limits of Access.** Access to the lease site is via plane/helicopter or snowmachine 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.

25. **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.

26. 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.

27. 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.

28. 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.

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

30. 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.

31. 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 time line showing when the Lessee will accomplish each step.

32. 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. All solid waste debris and any hazardous wastes that are used and stored on the site shall be removed and back-hauled to a DEC approved solid waste facility.
- c) The AO must approve a Restoration Plan at least 30 days prior to expiration, completion, or termination of this authorization, whichever is sooner.
- 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.

33. **Gravel/Fill Placement Materials.** When placed on the premises by the Lessee, fill material, gravel, and pavement, including building pads, parking areas, driveways, and similar structures become a part of the realty and property of the state, must be maintained by the lessee, and may not be removed from the premises by the Lessee without the prior written approval of the Lessor.

34. **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.

35. **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.

36. **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.

NOTE TO STAFF: Review FWS BMPs for possible inclusion in this document

SAMPLE