



# Municipality of Anchorage

Ethan Berkowitz, Mayor

---Merrill Field Airport---

Dear Prospective Lessee:

Merrill Field Airport (MRI) has developed a new lease package to provide you with necessary information in making lease decisions. The newly revised lease incorporates new language that reflects MRI's current policy in multiple sections, including, Section 1.5 Rate Adjustments and Section 4.3 Insurance.

Enclosed in this package are the following items: MRI standard Lease template, applicable Anchorage Municipal Code provisions, Timeline for Leasing, MRI Lease Term Guidelines, Construction Checklist and Landscaping Guidelines.

Please contact our office at 343-6303 for additional information.

Sincerely,

A handwritten signature in blue ink that reads "Paul Bowers".

Paul Bowers, A.A.E.  
Merrill Field Airport

# **MERRILL FIELD AIRPORT LEASING AGREEMENT**

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# APPENDIX 1

Municipality of Anchorage  
Merrill Field Airport (MRI)

## **Lease Template**

**AFTER RECORDING IN ANCHORAGE RECORDING DISTRICT**

**RETURN TO:**

Merrill Field Airport  
Municipality of Anchorage  
800 Merrill Field Drive  
Anchorage, AK 99501

**LEASE TITLE PAGE**

**MOA – [LESSEE]**

This LEASE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
and between the MUNICIPALITY OF ANCHORAGE, hereinafter referred to as the  
LESSOR", and \_\_\_\_\_, a[n] \_\_\_\_\_,  
hereinafter referred to as the "LESSEE."

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**MOA – [LESSEE]**

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**SIGNATORS LESSOR: LESSEE:**

**NOTARY**

**(CORPORATION)**

**(INDIVIDUAL)**

**(PARTNERSHIP)**

**(LIMITED LIABILITY COMPANY)**

**NOTARY**

## **LEASE**

MOA – [LESSEE]

This LEASE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the MUNICIPALITY OF ANCHORAGE, a municipal corporation organized and existing under its charter and the laws of the State of Alaska, hereinafter referred to as the "LESSOR", and \_\_\_\_\_, a[n] \_\_\_\_\_, hereinafter referred to as the "LESSEE." In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### **ARTICLE I**

#### **PREMISES, TERM AND RENTALS**

##### **Section 1.1. Premises**

LESSOR does hereby lease, demise and let unto LESSEE, and LESSEE does hereby lease from LESSOR, real property more particularly described as:

~~ \*\*\* ~~

hereinafter "Premises".

The Premises consists of \_\_\_\_\_ square feet as shown on attached **Exhibit A**.

**Section 1.2. Term**

The term of the Lease shall be for a period of \_\_\_\_ years, commencing on the 1st day of \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date") and ending on the last day of the month of \_\_\_\_\_, 20\_\_\_\_. In the event LESSEE fully and faithfully performs all of the covenants and conditions contained herein for the term of the lease, at the expiration of this Lease, LESSEE shall have two options to renew this Lease for additional periods of \_\_\_\_ years each with the rental rate for each renewal period to be negotiated and adjusted to achieve fair market rent as provided in Section 1.4 below. LESSEE shall indicate in writing its request to exercise the first option and the LESSOR shall negotiate the rental rate for said option period not more than twenty-four (24) months nor less than twelve (12) months prior to the end of the term of the Lease. LESSEE shall indicate in writing its request to exercise the second option and the LESSOR shall negotiate the rental rate for said option period not more than twenty-four (24) months nor less than twelve (12) months prior to the end of the term of the first option period. In the event LESSEE fails to so notify the LESSOR within said time period, this Lease shall be deemed terminated at the scheduled expiration date. If the Lease is extended as provided herein, it shall be subject to all provisions of the Anchorage Municipal Code in effect at the time of the extension, including approval by the Anchorage Assembly.

**Section 1.3. Rent**

A. LESSEE shall pay to the LESSOR as rent during the term hereof the sum of

\_\_\_\_\_  
(\$\_\_\_\_\_) per month, payable monthly, in advance, beginning on the first (1<sup>st</sup>) day of \_\_\_\_\_, 20\_\_\_\_, and on the first day of each and every month thereafter at the office of the LESSOR set forth in Section 7.9, or at such other place as the LESSOR may designate in writing. Failure to pay rent by the tenth (10<sup>th</sup>) day of the month shall obligate the LESSEE to pay a late charge of ONE HUNDRED DOLLARS (\$100.00) for each late payment. This sum is agreed to be a reasonable estimate of the



LESSOR's damages for late rental payments and shall not be construed as a penalty or a limitation on LESSOR's remedies.

- B. All rent shall be payable in current legal tender of the United States. Payment may be tendered by check, but payment shall not be deemed made until such check is honored by the drawee bank. The tender of payment by check within the time provided shall be deemed sufficient to meet any due date only if the check is honored by the drawee bank and LESSOR receives the legal tender required by this Lease. Any dishonor and/or non-receipt shall constitute a default of this Lease.
- C. The extension of time for the payment of any installment of rent, or the acceptance by LESSOR of any money other than of the kind herein specified, shall not be a waiver of LESSOR's right to insist on all other payments of rent to be made in the manner and at the time herein specified. The acceptance by the LESSOR of a past due installment payment shall not waive LESSOR's right as to any other default or breach of the Lease.
- D. The rent herein specified shall be net to the LESSOR and such payment shall not be subject to any abatement, deduction or offset, except as otherwise provided in this Lease.
- E. All taxes, charges, costs and expenses LESSEE is required to pay hereunder, and all damages, costs and expenses LESSOR may incur by reason of any default of the LESSEE, or failure on the LESSEE's part to comply with the terms of the Lease, shall be deemed additional rent and, in the event of nonpayment by LESSEE, LESSOR shall have all the rights and remedies with respect thereto as LESSOR has for nonpayment of basic rent.

#### **Section 1.4. Delinquency Clause**

LESSOR may send a Notice of Delinquency for ANY lease delinquency. Any three delinquency notices within any consecutive six month timeframe shall constitute a default of the lease.

#### **Section 1.5. Rent Adjustment**

- A. It is the intent of the parties that Merrill Field shall, at all times, be a self-sustaining facility and operate without support from the general fund of LESSOR, and rent, as adjusted pursuant to this section, shall be at, but not exceed, aeronautical rent or fair market rent, as applicable, for the Premises.
- B. The rent shall be adjusted annually by LESSOR by adoption by ordinance of the Anchorage Municipal Assembly approving a capital and operating budget for Merrill Field including, but not limited to, allowance for depreciation, reserves for repairs, debt service, and an apportioning to all leaseholders, according to the size of their leasehold at MRI. The MRI lease rental rates so adjusted annually to achieve fair market or aeronautical rent and all leases are subject to provisions of the Anchorage Municipal Code in effect at the time of entry or any extensions thereof, unless otherwise specifically addressed in writing in this Lease.
- C. Subject to the Assembly budget adoption process in B above, rental rates shall be adjusted annually based on annual Anchorage Consumer Price Index (ACPI) inflation adjustments, using the then-most-recent-year data available from the State of Alaska (SOA) Department of Labor and Workforce Development (DOLWD) and applying this annual ACPI rate to the then-current airport lease rates for projection as the next fiscal year rental rate.

Recognizing that the most-recent-year ACPI data available (typically the immediate previous year data from the SOA Dept. of Labor and Workforce Development), projected as the anticipated current year ACPI rate may be less, same, or more, but not having better criteria, each year adjustment will need reconciliation to reflect actual ACPI versus what was projected. Such annual

ACPI adjusted rates will be calculated and rounded to three decimal places (for example, \$0.208/sf/year).

- D. Notwithstanding the above, MRI may elect to have real estate appraisals done – on a specific leasehold(s) or airport-wide - at any time MRI determines, within its discretion, that the Anchorage CPI inaccurately reflects MRI land lease values and MRI deems it prudent to do so. Such appraisal values would then supersede the existent lease rate and would become the new rate basis for annual ACPI adjustments. Any proposed rate related lease adjustments will be shared with MRI LESSEES at least two months prior to implementation to better enable them to incorporate those adjustments into their business plans (recognizing such proposed rate adjustments are subject to Anchorage Assembly budget approval, typically in December of each year).
- E. If necessary during the pendency of any determination of aeronautical or fair market rent, LESSEE shall pay the rent last in effect for the Premises until a determination is made. Any deficiency between the rent so paid and the adjusted rent, retroactive to the beginning of the period due, shall be paid within thirty (30) days of billing to LESSEE plus interest from the original due date of such rent at the rate then in effect under Alaska law for interest on judgments.

**Section 1.6. Determination of Fair Market Rent**

Fair market rent shall not include any return on improvements placed on the Premises by LESSEE, but shall include a return for improvements placed on the Premises by LESSOR or otherwise belonging to LESSOR. Any appraisal of the Premises shall consider any limitation or restriction on use imposed under this Lease or pursuant to any patent, deed, Lease or grant from the United States to the LESSOR, including but not limited to aeronautical restricted use, and the parties acknowledge certain property at Merrill Field may not currently or in the future be leased for a non-aeronautical rate fair market rent. The rental returns received by

LESSOR from other aeronautical Leases at Merrill Field, therefore, shall not be used exclusively by the appraiser to determine non-aeronautical fair market rent.

## **ARTICLE II**

### **IMPROVEMENTS**

#### **Section 2.1. Improvements**

Promptly after execution and delivery of this Lease, and as hereinafter more particularly provided, LESSEE shall, at its own cost and expense, cause plans and specifications to be prepared for construction of the following building, structures and/or improvements to be placed on the Premises, hereinafter referred to as "Improvements":

*~ building, structures and/or improvements and related caveats description here ~*

~

The Improvements shall fully comply with all applicable laws including, but not limited to, federal, state, and municipal building, fire, construction, and safety codes, as well as zoning regulations and requirements. In addition, Improvements shall comply with a LESSOR-approved Landfill Gas Control Plan if such improvements are within 200 lineal feet of the former municipal landfill underlying part of MRI. LESSEE shall, at its own cost and expense, obtain a Landfill Gas Control Plan prepared by a qualified Engineer, licensed in Alaska and experienced in landfill gas issues. The Engineer shall be required to investigate, make recommendations, implement plans and supervise the installation of a Landfill Gas Control System to mitigate methane gas concerns. The Landfill Gas Control System shall address, at a minimum, detection, ventilation, continuous monitoring, and barrier requirements to protect against landfill gas intrusion into buildings.

**Section 2.2. Plans and Specifications**

LESSEE shall, at its own cost and expense, prepare preliminary plans and specifications for the Improvements, and shall prepare and submit said preliminary plans and specifications to the Airport Manager, within six months after lease commencement date, in sufficient detail to show the design, character, and appearance of the Improvements to be constructed. If the LESSEE fails to submit the preliminary plans and specifications required herein by the specified date, LESSOR shall have the right and privilege to terminate this Lease on ten (10) days written notice. If such notice is given, this Lease shall terminate and shall be of no further force and effect at the expiration of such ten day period.

**Section 2.3. Preliminary Plans**

The Airport Manager shall examine, promptly upon receipt, preliminary plans and specifications, and within thirty (30) days after receipt, inform LESSEE in writing of any objections to such preliminary plans and specifications. In such event, LESSEE shall propose, within thirty (30) days thereafter, any corrective amendments. The Airport Manager shall accept or reject such corrective amendments within the next twenty (20) days. Failure of the Airport Manager to inform LESSEE in writing of objections within twenty (20) days shall constitute the Airport Manager's approval.

For any new construction or substantial remodel to an exterior building surface subject to snow removal or vehicle parking damage, the plans and specifications must include a wainscoting protective exterior of at least three feet in height – or a comparable protection guard rail system, as well as a street address number and name of building or business that is readily visible to the vehicle roadway and Aircraft Operations Area sides of the improvement.

The Airport Manager's approval of preliminary plans and specification submitted by LESSEE shall not constitute assumption of any liability by LESSOR for compliance or conformity with applicable building codes, zoning regulations, and/or municipal,

state and federal laws, ordinances and/or regulations, or for accuracy. LESSEE shall be solely responsible for such plans and specifications. The Airport Manager's approval of such plans and specifications shall not constitute a waiver of LESSOR's right to thereafter require LESSEE to amend the same to provide for any corrections or omissions needed to comply with applicable building codes, zoning regulations, municipal, state or federal laws, ordinances or regulations. The Airport Manager's review and approval required by this section is in addition to any other review and/or approval necessary for any required building permits or similar authorization.

**Section 2.4. Final Plans**

After the Airport Manager notifies LESSEE of approval of preliminary plans and specifications, LESSEE shall promptly apply to the appropriate municipal building department/division for a building permit for any construction or building to be erected by LESSEE pursuant to this Article. LESSEE shall submit to the Airport Manager any plans and detailed drawings required for such permit, and shall obtain the Airport Manager's approval thereof before submitting such plans and drawings for a permit. Failure of the Airport Manager to inform LESSEE in writing of objections within twenty (20) days shall constitute the Airport Manager's approval of such plans and detailed drawings. Thereafter, LESSEE shall, at LESSEE's sole expense, proceed promptly with preparation of complete and final plans, and complete detailed specifications (such plans and specification hereafter described as "Final Plans") for the Improvements. The Final Plans shall be submitted to the Airport Manager for approval as soon as practicable. The failure of LESSEE to proceed promptly with preparation of final plans, or to submit final plans, as required herein, shall constitute a default and breach of this Lease. In event of such default and breach, LESSOR may terminate this Lease on ten (10) days written notice.

**Section 2.5. Airport Manager's Approval**

The Airport Manager shall not unreasonably withhold approval to any preliminary plans, specifications, plans and detailed drawings, or any Final Plans or complete detailed specifications. If the Final Plans substantially vary from the approved

preliminary plans and approved outline specifications, the withholding of the Airport Manager's approval of the Final Plans shall not be deemed unreasonable.

**Section 2.6. Compliance with Part 77 FAR and Building Restriction Line**

LESSEE shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations, as well as Airport Layout Plan Building Restriction Line setbacks from the runway centerline, prior to construction of the Improvements, prior to construction of any future structure or building upon the Premises, and/or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

**Section 2.7. Commencement of Construction**

LESSEE shall commence construction of the Improvements within one year after Commencement Date. For purposes of this Section, construction shall be considered commenced once LESSEE has acquired MOA approved building plans and any MOA approved building permit(s) required for the Improvements. If LESSEE has not commenced said construction within this defined time frame, unless otherwise specified in writing and incorporated into this lease, LESSOR shall have the right, at LESSOR's option, to terminate this Lease on ten (10) days written notice.

**Section 2.8. Completion of Construction**

LESSEE shall complete construction of the Improvements within two years after Commencement Date, unless otherwise specified in writing and incorporated into this Lease. Construction shall be deemed completed when the Improvements are substantially complete, capable of the use intended, and at least a conditional Certificate of Occupancy has been issued by MOA. If LESSEE does not complete construction by the scheduled completion date, LESSOR shall have the right, at LESSOR's option, to terminate this Lease on ten (10) days written notice.

**Section 2.9. LESSEE Compliance**

LESSEE shall procure all licenses and permits requisite to construction of the Improvements and shall, during the construction thereof, comply with all applicable legal requirements. Such Improvements shall, when completed, comply with all

applicable laws, ordinances, requirements, regulations or orders of any federal, state, municipal or public authority affecting or governing the Improvements. Nothing in this Lease or in this subsection is intended to limit or restrict the LESSOR or Municipality of Anchorage in the exercise of its police power or authority to enforce building, fire and other safety codes, laws, ordinances or regulations.

**Section 2.10. Liens**

LESSEE hereby warrants to LESSOR the Premises and all Improvements thereto, shall be free and clear of all liens, claims and encumbrances. LESSEE shall indemnify, defend and hold LESSOR harmless from and against any and all losses, damages and costs, including reasonable attorneys' fees, with respect thereto. If any lien or notice of lien on account of an alleged debt of LESSEE, or lien or notice of lien by any party engaged by LESSEE or LESSEE's contractor to work on the Premises, shall be filed against the Premises or Improvements, LESSEE shall cause the same to be discharged of record promptly by payment, deposit, bond, order by a court of competent jurisdiction, or otherwise.

**Section 2.11. Security Guarantor**

If required by LESSOR, LESSEE shall secure a surety performance and payment bond from a company acceptable to LESSOR in an amount equal to 110% of the cost estimated to exceed \$100,000 for improvements. If LESSOR does not require LESSEE to acquire a surety performance and payment bond, LESSEE agrees that this Lease will be terminated automatically, without any reimbursement, if LESSEE has not commenced construction per Section 2.7 or completed construction per Section 2.8, OR, alternatively, in lieu of lease forfeiture for non-performance, LESSEE shall pay to MRI a \$50,000 penalty payment to waive such termination. With such \$50,000 penalty waiver payment, LESSEE will then have an additional year to Commence/ Complete construction. If LESSEE has not commenced construction per Section 2.7 or completed construction per Section 2.8 (if construction has commenced) within the additional 1-year period, LESSOR will have the right to immediately terminate the Lease.



**Section 2.12. Inspection**

LESSOR shall have the right, from time to time, to inspect the Improvements and, during construction or at any time prior to the issuance of a final certificate of occupancy, LESSOR determines the Improvements are not being constructed in accordance with the approved plans and specifications, LESSOR may give notice in writing to LESSEE specifying in detail the particular deficiency or omission regarding such construction that does not accord with the plans and specifications. Upon receipt of such notice, LESSEE shall take all steps necessary to cause corrections to any deficiencies, omissions or otherwise.

**Section 2.13. Non-Responsibility**

LESSOR may, at any time, enter upon the Premises for the purpose of posting notices of non-responsibility for any work, labor or materials supplied or furnished to the Premises. LESSEE shall notify LESSOR, in writing and in advance of any construction, in order for LESSOR to post such notices of non-responsibility. It is the understanding of the parties hereto that any such work, labor, or materials are supplied only to further the purposes of LESSEE and the work, labor and materials are contracted for solely by LESSEE for LESSEE's own benefit and not as agent of LESSOR.

**Section 2.14. As-built Plans**

Within sixty (60) days after the completion, LESSEE shall deliver to LESSOR a surveyed plot plan of the Premises showing the completed Improvements as-built in relation to the property lines of the Premises.

**Section 2.15. Disposition of Improvements on Premises**

All alterations, buildings, structures or other Improvements placed on the Premises by LESSEE shall be subject to Section 7.6 of this Lease, except as provided in Section 3.15.

**Section 2.16. Alterations and Other Improvements**

LESSEE shall have the right, from time to time, to make alterations and improvements to and decoration of, the Premises and/or the Improvements upon the

Premises as shall be reasonably necessary or appropriate, in the LESSEE's judgment, for LESSEE's conduct of business, provided any such alteration or improvement shall be consistent with LESSEE's use and occupancy of the Premises for the purposes permitted under this Lease, LESSEE shall first obtain the LESSOR's approval, which approval shall not be unreasonably withheld by LESSOR, and LESSEE shall comply with all provisions of this Article.

**Section 2.17. Pavement/Utility Services**

Any pavement or utility services constructed by LESSEE shall be in accordance with design and specifications approved by LESSOR, and the construction shall be subject to inspection by the LESSOR. Such improvements shall not be constructed without the prior written consent of LESSOR.

**ARTICLE III**

**USE OF THE LEASED PREMISES**

**Section 3.1. Airport Purposes**

LESSEE shall have the right to conduct the following aeronautical related activities, all inclusive and for no other purpose. LESSEE may engage in the business of:

*~ ~ Description here of the construction, operation and maintenance of ~ ~.*

*The use of the above is limited to \*\*\*.*

It is the purpose of this Lease to foster and abet air commerce at Merrill Field; it is not the intent of this Lease to provide Premises for uses not promoting the development and use of Merrill Field.

Any non-aeronautical use at Merrill Field shall be limited and incidental. Any non-aeronautical use shall be approved by the Airport Manager in writing prior to commencement. Any approved non-aeronautical use shall be allowed only on an interim basis, and shall be phased out if aeronautical demand increases. If a non-

aeronautical use is approved, rent provided in Section 1.3 shall be amended to reflect the fair market value of the portion of the Premises used for non-aeronautical uses. Requests for non-aeronautical uses shall be made first to the Airport Manager and, if approved by the Airport Manager, the non-aeronautical use and the conditions associated therewith shall be detailed in an Addendum to this Lease.

LESSEE shall not use or permit any part of the Premises to be used for any unlawful purposes of or for any purpose or use that may constitute a nuisance or hazard to health, safety, or property. LESSEE shall not use or allow the Premises or any part thereof to be used or occupied for any purpose in violation of any law, lawful order, or rule or regulation concerning the operation or use of Merrill Field.

**Section 3.2. Compliance with Laws**

LESSEE shall comply with all laws now or hereinafter in effect regarding the Premises or LESSEE's use or occupancy thereof including, but not limited to, Anchorage Municipal Code chapters 11.60 and 25.30.

**Section 3.3. Hazardous Material**

- A. LESSEE shall not cause or permit any Hazardous Material or Substance to be brought upon, generated, stored, disposed of or used in or about the Premises by LESSEE, its agents, employees, contractors, or invitees, without the prior written consent of LESSOR. LESSOR shall not unreasonably withhold consent as long as LESSEE demonstrates to LESSOR's reasonable satisfaction such Hazardous Material or Substance is necessary to LESSEE's business and shall be used, generated, disposed of, and stored in a manner in compliance with all laws regulating any such Hazardous Material or Substance so brought upon, generated, stored, disposed of or used in or about the Premises. LESSOR may, at its option, require LESSEE to provide periodic reports as to the kinds and quantities of Hazardous Materials or Substances on the Premises and as to how LESSEE is complying with applicable laws.

- B. If Hazardous Materials or Substances are used, generated, disposed of, or stored in or about the Premises during the term of this Lease, LESSOR may, at its election, perform an environmental assessment of the Premises, at LESSEE's sole cost and expense, at the termination of this Lease or termination of LESSEE's right to possession under this Lease, whichever occurs first.
- C If:
1. LESSEE breaches the obligations stated in subsection A. above;
  2. The presence of Hazardous Material or Substance on the Premises caused or permitted by LESSEE results in contamination of the Premises or contamination of any other property at Merrill Field; or
  3. Contamination of the Premises or any other property at Merrill Field by Hazardous Material or Substance otherwise occurs for which LESSEE is legally liable to LESSOR for damage resulting therefrom,
- then LESSEE shall indemnify, defend, and hold LESSOR harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims, attorneys' fees, consultant fees, expert fees, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material or Substance present in the soil or groundwater on or under the Premises which arise during or after the Lease term as a result of such contamination.
- D. Without limiting the foregoing, if the presence of any Hazardous Material or Substance on the Premises caused or permitted by LESSEE results in any contamination of the Premises or any other property at Merrill Field, LESSEE shall promptly take all actions at its sole expense as are necessary to return the

Premises and/or other property to the condition existing prior to the introduction of any such Hazardous Material or Substance, provided LESSOR's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or other property.

- E. As used herein, the term "Hazardous Material or Substance" shall be interpreted broadly to include, but not be limited to, substances designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1257, et seq., the Clean Air Act, 42 U.S.C. § 42 U.S.C. § 2001, et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., Title 46 of the Alaska Statutes, or by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect and as amended or interpreted from time to time.
- F. The provisions of this section shall survive termination of LESSEE's right to possession of the Premises and/or termination of this Lease.

**Section 3.4. Americans With Disabilities Act**

LESSOR and LESSEE agree, as allowed by 28 C.F.R. § 36.201(b), LESSEE shall be responsible for all compliance under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) related to LESSEE's use and occupancy of the Premises. LESSEE agrees to defend, indemnify and hold LESSOR harmless from any claim, demand, or action, either by a private person or a governmental entity, under said Act due to failure to comply with the terms of said Act. The provisions of this section shall survive termination of LESSEE's right to possession of the Premises and/or termination of this Lease.

**Section 3.5. Reservations and Exceptions**

This Lease is made by LESSOR and accepted by LESSEE conditioned upon and subject to any conditions, reservations, limitations, provisions or terms imposed upon the Premises of Merrill Field, as contained in any grant (including any monetary grant

or loan), Lease, permit, patent, deed, or any other conveyance to LESSOR of the Premises, or of Merrill Field, from the United States, or the State of Alaska, including their agencies. In the event any such condition, reservation, limitation, provision or term shall prevent, without fault of LESSOR, this Lease from continuing in full force and effect, LESSOR shall have the option to terminate this Lease immediately (and at any time), without liability to LESSEE therefore.

**Section 3.6. Subordination of Lease to Requirements of the FAA**

- A. This Lease shall be subordinated to the provisions of any existing or future contract, grant or agreement between LESSOR and the United States relative to the operation or maintenance of Merrill Field, the execution of which has been or may be required as a condition precedent to expenditure of federal funds for the development or operation of Merrill Field.
- B. In connection therewith, LESSOR has undertaken, and may in the future undertake, certain obligations respecting its operation of Merrill Field and activities of its contractors, LESSEEs, and permittees thereon. The performance by LESSEE of the covenants, promises and obligations contained in this Lease is therefore a special consideration and inducement to this Lease. LESSEE further covenants and agrees if the administrator of the Federal Aviation Administration or any other governmental official or body with jurisdiction over enforcement and obligations of LESSOR and/or Municipality of Anchorage, in connection with Federal or State aid, shall make any orders, recommendations or suggestions respecting the performance by LESSEE of its obligations under this Lease, LESSEE shall promptly comply therewith, at the time or times when and to the extent LESSOR may direct.

**Section 3.7. Aircraft on Premises**

LESSEE shall provide the Airport Manager, upon request, a list identifying all aircraft on the Premises for any purpose, together with the aircraft type, model and number, the name and address of the owner, the purpose of the aircraft being on the Premises,

and such other information concerning identification thereof as the Airport Manager shall deem necessary.

**Section 3.8. Discriminatory Acts Prohibited**

- A. **Compliance with Regulations:** The LESSEE (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this lease.<sup>1</sup>
- B. **Non-discrimination:** The LESSEE, with regard to the work performed by it during the term of the lease, will not discriminate on the grounds of race, color,

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<sup>1</sup> During the performance of this contract, LESSEE agrees to comply with the following non-discrimination acts and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the LESSEE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the LESSEE of the LESSEE's' obligations under this Lease and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- D. **Information and Reports:** The LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a LESSEE is in the exclusive possession of another who fails or refuses to furnish the information, the LESSEE will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a LESSEE's noncompliance with the Non-discrimination provisions of this lease, the sponsor will impose such lease sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

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• Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



1. Withholding payments to the LESSEE under the lease until the contractor complies; and/or
  2. Cancelling, terminating, or suspending a lease, in whole or in part.
- F. **Incorporation of Provisions:** The LESSEE will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The LESSEE will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the LESSEE becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the LESSEE may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the LESSEE may request the United States to enter into the litigation to protect the interests of the United States.
- G. LESSEE shall furnish any service rendered by LESSEE in connection with or upon the Premises on a fair, equal and not unjustly discriminatory basis to all users thereof. In performing such services, LESSEE shall charge fair, reasonable and not unjustly discriminatory prices or rates for each unit of service furnished, provided LESSEE may allow for reasonable discounts, rebates or other similar types of price reductions to volume users or purchasers.
- H. LESSEE and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates LESSEE or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein;

structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

1. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
2. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

I. LESSEE for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land) that:

1. No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
2. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, LESSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) (See Footnote 1) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
3. That in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,

4. That LESSEE will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts and Authorities (as may be amended). See Footnote 1.
- J. In the event of breach of any of the above Nondiscrimination covenants, LESSOR will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

**Section 3.9. Affirmative Action**

- A. LESSEE shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure no person shall, on the grounds of race, creed, color, national origin, sex, or sexual orientation, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. LESSEE assures no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered in this subpart. LESSEE assures it shall require its covered sub-organizations to provide assurances to LESSOR to similarly undertake affirmative action programs, and they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- B. LESSOR upon ten (10) days notice to LESSEE of any violation of subsection A. shall request LESSEE either correct or justify any practice or charge alleged as a violation. In any proceeding whatsoever, the burden of justification shall be on LESSEE to show the practice or charge complies with the requirement of subsection A. LESSEE shall, within ten (10) days after receipt of the notice, comply with the request or submit to LESSOR its justification in writing. LESSOR shall submit its findings and decision as to any alleged violation within fifteen (15) days after receipt of the LESSEE's justification. Such findings and decision of LESSOR shall be final. Unless LESSEE shall notify LESSOR in writing within ten (10) days of objections to any request for compliance or to any

adverse findings and decision, LESSEE shall waive any defense the alleged violation is justified.

- C. LESSOR may, at its option, forthwith terminate this Lease without any liability to LESSEE thereunder for any failure by LESSEE without justification to comply with LESSOR's request for compliance within the time set forth in the request of the findings and decision to correct the alleged violation.

**Section 3.10. Maintenance of Premises**

- A. LESSEE shall repair and maintain the Improvements in good order and repair and keep the Premises in a neat, safe, clean and orderly condition. Such obligation shall include, but not be limited to, prevention of accumulation of any refuse or waste materials, tree, weed and brush removal, storage of boats, motorhomes, non-current or un-licensed/tagged or junk vehicles, and maintenance of security fences free of obstacles or materials, any of which might be or constitute a fire hazard or a public or private nuisance.
- B. In the event LESSEE does not properly repair and/or maintain the Improvements or Premises, LESSOR shall notify LESSEE in writing of those areas not being properly repaired and/or maintained. If, however, after sixty (60) days LESSEE fails to make such repair and/or maintenance, LESSOR may cause to have such repair and maintenance made and invoice LESSEE for the repair and maintenance completed. If said costs are not paid promptly by LESSEE, the Lease shall be deemed in default, and LESSOR shall be entitled to all legal remedies provided hereunder.
- C. LESSEE shall perform all monitoring requirements for landfill gas provided in the approved Landfill Gas Control Plan referenced in Article II and shall fully comply with all requirements thereof including, but not limited to, all maintenance and repair obligations.

**Section 3.11. Signs**

As a minimum, LESSEE shall install a building sign (or signs) that includes a street address number and LESSEE's trade name or building name readily visible to the

vehicle roadway and Aircraft Operations Area sides of the improvement, subject to LESSOR's prior written consent which shall be required before LESSEE may place or erect any sign of any nature on any part of the Premises. Such consent shall not be unreasonably withheld as to one (or more) flat sign(s) of reasonable size bearing LESSEE's trade name or building name, providing such sign meets all municipal zoning requirements. At the termination of this Lease, any sign(s) shall be removed by LESSEE at LESSEE's own expense and any resultant damage to premises by such removal shall be repaired.

**Section 3.12. Improvements and Alterations**

After initial improvements set forth in Article II are completed, and if LESSEE desires to construct further improvements:

- A. Prior to commencing construction, renovation, enlargement, demolition, or modification of leasehold improvements now or hereafter existing on the Premises, LESSEE shall submit plans and specifications for such work (including plans for landscaping and irrigation) and a Timeline for all phases of the work to the Airport Manager. The Airport Manager shall approve or disapprove such plans and specifications and accompanying Timeline in its sole discretion. Upon LESSEE's receipt of the Airport Manager's written approval of such plans and specifications, LESSEE agrees to construct the proposed leasehold improvements in strict accordance with such plans and specifications and Timeline. The Airport Manager's approval of plans and specifications submitted by LESSEE shall not constitute assumption of any liability by LESSOR for compliance or conformity with applicable building codes, zoning regulations, and municipal, state and federal laws, ordinances and regulations, or for accuracy, and LESSEE shall be solely responsible for compliance and conformity with such plans and specifications. The Airport Manager's approval of such plans and specifications shall not constitute a waiver of LESSOR's right to thereafter require LESSEE to amend the same to provide for any corrections or omissions needed to comply with applicable building codes, zoning

regulations, municipal, state or federal laws, ordinances or regulations. The review and approval required by this subsection is in addition to any other review and approval needed for any required building permits or similar authorizations.

- B. LESSEE shall obtain all necessary licenses and permits to accomplish any of the work described in subsection A. Nothing in this Lease is intended to limit or restrict LESSOR in the exercise of its police power, authority to enforce building, fire and other safety codes, laws, ordinances, or regulations.
- C. LESSEE shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations, as well as FAA Notice of Proposed Construction approval, if required, prior to construction of the Improvements and prior to construction of any future structure or building upon the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.
- D. Before commencement of any LESSEE work, contract or agreement for labor, services, materials or supplies to be furnished in connection with construction or alteration of any improvement to the Premises, LESSEE shall deliver to LESSOR either an executed duplicate original of such contract or a written waiver by the architect, engineer, contractor, materialman, mechanic, person or corporation named in such contract of all right of lien it might otherwise have upon or against the Premises, or the improvements to be constructed or altered, or the interest of LESSOR therein. Such notice shall provide no lien, claim or other encumbrance shall thereby be created, or arise, or be filed by anyone thereunder upon or against the Premises or the improvements. LESSEE also hereby warrants to LESSOR the Premises, and all such other improvements thereto, shall be free and clear of all liens, claims and encumbrances and shall indemnify, defend and hold LESSOR harmless from and against any and all losses, damages and costs, including reasonable attorneys' fees, with respect thereto. If any lien or notice of lien on account of an alleged debt of LESSEE or lien or notice of lien by any party engaged by LESSEE or LESSEE's contractor

to work on the Premises shall be filed against the Premises or improvements, LESSEE shall cause the same to be discharged of record promptly by payment, deposit, bond, order by a court of competent jurisdiction, or otherwise.

- E. All alterations, buildings, structures or other improvements placed on the Premises by LESSEE shall be subject to Section 7.6 of this Lease, except as provided in Section 3.15.

**Section 3.13. Quiet Possession**

LESSEE shall and may have, upon paying rent and observing the conditions and terms of this Lease, at all times during the term of this Lease, peaceful and quiet enjoyment and possession of the Premises, except as otherwise set forth in this Lease.

**Section 3.14. LESSEE's Option to Terminate**

If any governmental body, agency, or official, other than LESSOR, prohibit or otherwise prevent the use of Merrill Field in its present condition as a public airport for one year or more, or if continued use of Merrill Field as an airport becomes impossible or unlawful without fault of LESSEE, LESSEE shall have the option to terminate this Lease on thirty (30) days written notice to LESSOR. Upon such termination, this Lease shall end, and neither party shall have any liability for such termination. LESSOR shall notify LESSEE in writing, if possible, of the prohibition, or intended prohibition, and the failure of LESSEE to exercise the option to terminate within thirty (30) days shall extinguish the LESSEE's option to terminate.

**Section 3.15. LESSOR's Option to Terminate**

- A. In the event LESSOR requires the Premises in connection with future expansion and/or operation of the Airport prior to the expiration or termination of this Lease, LESSOR may, upon ninety (90) days written notice, cancel this Lease.
- B. In the event this Lease is canceled pursuant to this section, LESSOR shall pay to LESSEE the fair market value of LESSEE's remaining leasehold interest and the fair market value of LESSEE-owned buildings, structures, alterations and/or improvements placed by LESSEE upon the Premises during the term of this Lease. The fair market value shall be determined by following the appraisal

procedure set forth for determination of the fair market rental of the Premises in Section 1.6 of this Lease. Upon payment as provided herein, all buildings, structures, alterations and/or improvements shall become the sole property of the LESSOR. LESSOR, in its discretion, may utilize or remove any or all buildings, structures, alterations and/or improvements from the Premises.

**Section 3.16. Right of Entry and Access**

- A. LESSEE hereby grants to LESSOR, its contractors, employees, agents and assigns, the irrevocable right, permission and authority to enter into and upon all or part of the Premises for the purpose of:
1. Inspecting the Premises;
  2. Cleaning, repairing, maintaining, altering or improving the Premises as LESSOR may deem necessary;
  3. Abating any nuisance or hazardous condition on the Premises;
  4. Preserving and/or protecting the Premises;
  5. Monitoring and/or testing for landfill gas; and/or
  6. Excavating for, locating, establishing, installing, and constructing improvements for any part of the Merrill Field Landfill Gas Extraction System.
- B. It is understood and agreed that entry and access may affect the use of the Premises from time to time. LESSOR shall use reasonable efforts to coordinate any anticipated access, utility or other interruptions with LESSEE, to minimize the effect of any disruption of LESSEE's enjoyment and use of the Premises.
- C. The right of access and entry reserved herein does not impose, nor does LESSOR assume by reason thereof, any responsibility for the care, maintenance or supervision of the Premises. LESSEE shall not be entitled to any abatement or reduction in rent by reason of LESSOR's access and/or entry nor shall such access or entry be deemed an actual or constructive eviction.



**Section 3.17. LESSOR's Improvements**

- A. LESSOR shall have permanent right of access over, under, around and across the Premises for purposes of maintaining, servicing, upgrading, replacing or removing any LESSOR-installed improvements including, but not limited to, light poles, fencing, and components of the Merrill Field Landfill Gas Extraction System. LESSOR's maintenance shall not include paving, aircraft tiedowns, snow removal or sanding.
- B. All improvements constructed by LESSOR shall at all times remain the property of LESSOR and may be maintained, upgraded, serviced and/or removed at LESSOR's convenience and discretion.
- C. LESSOR agrees to use reasonable efforts to coordinate maintenance, upgrading, replacing or repair work with LESSEE to avoid disrupting LESSEE's use of the Premises whenever possible.

**Section 3.18. Aviation Easement**

LESSEE's right to use the Premises for the purposes set forth in this Lease shall be secondary and subordinate to operation of the airport. LESSOR specifically reserves for itself, other Merrill Field leaseholders, and for the public, an easement for the passage of aircraft in the air space above the surface of the Premises together with the right to cause in said air space or on adjacent property such noise as may be inherent in the present or future operation of aircraft. Without limiting LESSOR's rights under Section 3.12, LESSEE shall not construct any building or facility to a height which, in LESSOR's sole discretion, interferes with the operations of the airport.

**Section 3.19. Right-of-Way and Easements**

LESSOR shall have the right to designate or grant rights-of-way or utility easements across the Premises without compensation to LESSEE, provided LESSEE shall be entitled to compensation for the taking or destruction of any of LESSEE's improvements and provided further LESSEE may terminate the Lease or demand a rental adjustment to reflect any reduction in value of the Premises.

## **ARTICLE IV**

### **TAXES, INDEMNIFICATION, AND INSURANCE**

#### **Section 4.1. Taxes, Assessments, and Utilities**

LESSEE, in addition to the rents provided for herein, shall pay when due (and before delinquency) all taxes, assessments and charges upon the Premises, and upon all LESSEE owned and/or constructed buildings, improvements and property thereon, assessed or charged at any time during the Lease term. LESSEE shall furnish to LESSOR for inspection, within thirty (30) days after the date any amount payable by LESSEE as required by this section, official receipts from the appropriate taxing authorities or other proof satisfactory to LESSOR evidencing payment. LESSEE shall have the right at all times to protest any assessment of taxes or other assessments or charges, but LESSOR may require LESSEE to deposit with LESSOR any sums in dispute to insure payment in the event any contest is unsuccessful. LESSEE shall pay and be responsible for all charges for gas, electricity, water, light, heat, power, garbage, solid waste, and other utility service used in or about or supplied to the Premises.

#### **Section 4.2. Indemnification**

LESSEE shall indemnify, defend and hold LESSOR harmless from all liability or loss including, but not limited to, reasonable attorneys' fees arising from any injury to any person or persons, including LESSEE, its agents, employees or invitees, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, resulting from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease, or any use or occupancy hereunder, however occurring, including any acts, negligent or otherwise, by the agents, independent contractors, employees, servants or invitees of LESSEE unless caused by or resulting from the negligence of LESSOR or LESSOR's agents, servants or employees.

**Section 4.3**      **Insurance**

- A. LESSEE, at its own expense, shall secure and maintain in full force at all times during the term of this Lease:
1. Commercial general liability insurance, inclusive of airport premises liability insurance, with a single occurrence liability limit of \$1,000,000 insuring against liability of LESSEE, its officers, contractors, licensees, agents, employees, guests, invitees and authorized representatives, arising out of and/or in connection with LESSEE's use or occupancy of the Premises;
  2. Workers Compensation insurance with coverage for all employees engaged in work under this Lease in conformity with AS 23.30.
- B. The insurance required under this Section shall:
1. Name the LESSOR as an "additional insured";
  2. Each policy of insurance required by this section shall provide for advance notice to the Merrill Field Airport prior to cancellation in accordance with the policy. If the insurer does not notify Merrill Field Airport upon policy cancellation, it shall be the LESSEE's responsibility to notify Merrill Field Airport of such cancellation.
  3. Be with an insurance company qualified to do business in the State of Alaska with a financial rating of at least "A" as rated in current Best's Insurance Reports.
  4. Include a waiver of subrogation clause where the insurer waives all rights of subrogation against LESSOR for payments made under the policy; and
  5. Contain a damage deductible for each and every loss that does not exceed \$5,000.00.
- C. LESSEE shall provide LESSOR with proof of insurance coverage in the form of a certificate of insurance and, if requested by LESSOR, LESSEE shall provide LESSOR with a copy of the policy(ies). Failure to maintain insurance in effect

shall constitute grounds for immediate termination of this Lease. LESSOR may, at its option, purchase insurance and charge the expense thereof to LESSEE; LESSEE shall assume and pay any such expense.

- D. LESSOR may adjust minimum insurance requirements by giving LESSEE written notice of adjustment ninety (90) days prior to expiration of each five (5) year term of this Lease. LESSOR may also adjust minimum insurance requirements at any time if LESSEE's use of the Premises changes and, in such event, LESSOR shall give LESSEE thirty (30) days written notice of such adjustment.
- E. The requirements of insurance coverage do not relieve LESSEE from any other obligation under this Lease.

## **ARTICLE V**

### **ASSIGNMENT AND SECURITY INTERESTS**

#### **Section 5.1. Assignment and Subletting**

- A. LESSEE shall not voluntarily assign its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining LESSOR's prior written consent. LESSOR's consent to an assignment shall not be unreasonably withheld provided the assignment shall agree to the attached form of Consent to Assignment of Lease attached hereto as **Exhibit B**. LESSEE shall furnish LESSOR with copies of all assignment documentation assigning the Premises for LESSOR's approval prior to any assignment of the Premises, and shall further furnish copies to LESSOR of all such executed assignment transactions.
- B. Any assignment, encumbrance or sublease without LESSOR's consent shall be voidable and, at LESSOR's election, shall constitute a default of this Lease.
- C. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this section.

- D. If LESSEE is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner or partners owning fifty percent (50%) or more of the partnership in one or more transactions, or the dissolution of the partnership, shall be deemed a voluntary assignment.
- E. If LESSEE is a corporation, any dissolution, merger, consolidation or other reorganization of LESSEE, or the sale or other transfer of a controlling percentage of the capital stock of LESSEE in one or more transactions, or the sale of twenty-five-percent (25%) of the value of the assets of LESSEE in one or more transactions without immediate replacement with assets of equal or greater worth, shall be deemed a voluntary assignment.
- F. LESSEE hereby irrevocably assigns to LESSOR, as security for LESSEE's obligations under this Lease, all rent from any subletting of all or a part of the Premises, and LESSOR, as assignee and attorney-in-fact for LESSEE, may collect such rent and apply it toward LESSEE's obligations under this Lease except, until the occurrence of an act of default by LESSEE, LESSEE shall have the right to collect such rent. Neither this section nor collection of any such rent by LESSOR shall be deemed to be LESSOR's approval of any such sublease.
- G. If, as a result of an assignment or sublease, the Premises are used for purposes other than as set forth in Section 3.1 herein, the prior written consent of the Airport Manager and the FAA, if applicable, shall be obtained. Additionally, if incremental revenues over and above LESSEE's Lease payments are realized as the result of a sublease or assignment pertaining to non-aeronautical uses, LESSOR may raise LESSEE's existing rent to fair market value at the time of approval of the sublease.
- H. All assignment instruments shall include language whereby Assignee expressly assumes and agrees to pay the obligations of LESSEE under this Lease. No assignment shall release or in any manner diminish the obligations of LESSEE for performance of LESSEE's obligations hereunder and LESSEE shall remain liable as if no assignment were made. LESSEE and Assignee shall be jointly

and severally liable for such obligations. Neither this section nor any payment of rent by such Assignee shall be deemed to be LESSOR's approval of any such assignment, including amendments thereto, if any.

- I. All sublease instruments shall provide the sublease is subject to all of the terms, covenants and conditions of this Lease.
- J. LESSEE shall pay to LESSOR, on demand, reasonable costs incurred by LESSOR in connection with any request for LESSOR to consent to any assignment or subletting by LESSEE.

**Section 5.2. Mortgage and Encumbrances**

LESSEE shall not mortgage or otherwise encumber this Lease, including LESSEE's leasehold estate and/or the improvements thereon, without the prior written consent of LESSOR. LESSOR's consent to a mortgage or encumbrance shall not be unreasonably withheld provided the mortgagee or encumbrance shall agree to the attached form of Consent to Assignment of Lease for Security Purposes attached hereto as **Exhibit B**. LESSEE shall furnish LESSOR with copies of all security transactions and documentation mortgaging or encumbering the Premises for LESSOR's approval prior to any mortgaging or encumbering of the Premises, and shall further furnish copies to LESSOR of all such executed security transactions.

**ARTICLE VI**

**DEFAULT AND ENFORCEMENT**

**Section 6.1. Default Defined**

The occurrence of one or more of the following shall be deemed a default by LESSEE and a breach of this Lease:

- A. Failure to pay the rent provided herein, or any part thereof, or any other charge due hereunder, for a period of ten (10) days after written notice of such failure is given by LESSOR to LESSEE;
- B. Failure to perform the obligations set forth in Sections 2.1, 2.2, 3.8, 3.9, and 3.10, after any notice required by those sections;

- C. Failure to provide and maintain in effect insurance in compliance with Section 4.3;
- D. Failure to do, observe, keep and perform any other terms, covenants, conditions, agreements and provisions contained in this Lease for a period of thirty (30) days after written notice of such failure is given by LESSOR to LESSEE or, in the case of a default not reasonably susceptible of being cured within thirty (30) days (which shall not include any default curable by payment of money), failure to commence promptly and proceed diligently and in good faith to cure such default within the initial thirty (30) days and complete such cure within a total of sixty (60) days after the sending of the notice;
- E. Abandonment of the Premises by LESSEE, the making by LESSEE of a general assignment for the benefit of creditors, or the appointment of a permanent or temporary receiver for LESSEE's property, which is not vacated or set aside within thirty (30) days of written notice of such event to LESSOR; or
- F. The issuance of three (3) written notices for defaults or breaches within any consecutive six (6) month period, regardless of whether or not the default or breach was cured within the applicable time period.

**Section 6.2. LESSOR Remedies on Default**

Upon the occurrence of any default of LESSEE, as described in Section 6.1, or elsewhere in this Lease, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. LESSOR may, at its election:
  - 1. Terminate this Lease; or
  - 2. Terminate LESSEE's right to possession only, without terminating this Lease.
- B. Upon termination of this Lease, whether by lapse of time or otherwise, or upon any termination of LESSEE's right to possession without termination of this Lease, LESSEE shall surrender possession and vacate the Premises immediately, and deliver possession to LESSOR. LESSEE hereby grants to

LESSOR full and free license to enter into and upon the Premises in such event with or without process of law and to repossess LESSOR of the Premises and to expel or remove LESSEE and any others occupying or within the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom. LESSEE hereby waives any right to claim damage for such re-entry and expulsion and without relinquishing LESSOR's right to rent or any other right given to LESSOR hereunder or by operation of law.

C. Upon any termination of this Lease, whether by lapse of time or otherwise, LESSOR shall be entitled to recover:

1. The worth at the time of the award of unpaid rent, including any amounts treated as additional rent, earned at the time of termination;
2. The worth at the time of the award of the amount of unpaid rent, including any amounts treated as additional rent, earned after the date of termination until the time of award exceeding the amount of the loss of rent for the same period LESSEE proves could have been reasonably avoided;
3. The worth at the time of the award of the amount of unpaid rent, including a reasonable estimate of additional rent, for the balance of the term exceeding the amount of the loss of rent for the same period LESSEE proves could have been reasonably avoided; and
4. Any other amount plus court costs necessary to compensate LESSOR for all detriment proximately caused by LESSEE's default.
5. The "worth at the time of the award":
  - a. As used in subsections 1. and 2. above, shall be computed by allowing interest at the rate provided under Alaska law for interest on judgments; and



- b. As used in subsection 3 above, shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

D. Termination of right to Possession.

1. Upon any termination of LESSEE's right to possession only, without termination of this Lease, LESSOR may enter the Premises, remove LESSEE's signs and other evidences of tenancy, and take and hold possession thereof as provided in subsection B. above, without such entry and possession terminating this Lease or releasing LESSEE, in whole or in part, from any obligation, including LESSEE's obligation to pay the rent, including any amounts treated as additional rent hereunder, for the full term.
2. Upon termination of LESSEE's right to possession, LESSOR may, but is not required to, relet the Premises or any part thereof for such rent and upon such terms as LESSOR in its sole discretion shall determine including, but not limited to, the right to relet the Premises for a greater or lesser term than remaining under this Lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises.
  - a. LESSOR shall not be required to accept any tenant offered by LESSEE or to observe any instructions given by LESSEE about reletting.
  - b. LESSOR may make repairs, alterations and additions in or to the Premises, and LESSEE shall, upon demand, pay the cost thereof, together with LESSOR's expenses of reletting.
  - c. If the consideration collected by LESSOR upon any reletting, plus any sums previously collected from LESSEE, are not sufficient to pay the full amount of all rent, including any amounts treated as

- additional rent and other sums reserved in this Lease for the remaining term hereof, together with the costs of repairs, alterations, additions, and LESSOR's expenses of reletting and the collection of the rent accruing therefrom (including attorney's fees), LESSEE shall pay to LESSOR the amount of any such deficiency upon demand.
- d. LESSEE agrees LESSOR may file suit to recover any sums falling due under this subsection from time to time.
- E. LESSOR may, at LESSOR's option, enter into and upon the Premises, with or without process of law, if LESSOR determines, in its sole discretion, LESSEE is not acting in a commercially reasonable time to maintain, repair or replace anything LESSEE is responsible for hereunder and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer, and without incurring any liability for any damage resulting therefrom. LESSEE shall reimburse LESSOR, on demand, as additional rent, for any expenses LESSOR may incur in effecting compliance with LESSEE's obligations under this Lease.
- F. Any and all property of LESSEE may be removed from the Premises by LESSOR pursuant to the authority of this Lease or of law or in equity. LESSOR may handle, remove and store, as the case may be, in its sole discretion, at the risk, cost and expense of LESSEE, and LESSOR shall in no event be responsible for the value, preservation or safekeeping thereof. LESSEE shall pay to LESSOR, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in LESSOR's possession or under LESSOR's control. Any such property of LESSEE not retaken by LESSEE from storage within thirty (30) days after removal from the Premises shall be conclusively presumed as conveyed by LESSEE to LESSOR under this Lease as a bill of sale without further payment or credit by LESSOR to LESSEE. Pursuit of any of the foregoing remedies shall

not preclude pursuit of any other remedies provided herein or any other remedies provided by law or equity, all such remedies being cumulative, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent, additional rent or other sum due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained.

- G. No act or thing done by LESSOR or its agents during the term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or an acceptance of the surrender of the Premises shall be valid unless in writing signed by LESSOR.
- H. No judicial action shall be necessary to terminate this Lease.
- I. LESSOR's acceptance of the payment of rent, including any amount treated as additional rental, or other sums hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless LESSOR so notifies LESSEE in writing.
- J. If, on account of any breach or default by LESSEE in LESSEE's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for LESSOR to employ or consult with an attorney concerning this Lease or enforce or defend any of LESSOR's rights or remedies hereunder, LESSEE agrees to pay any attorney's fees so incurred.
- K. LESSOR shall not be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon such reletting.

**Section 6.3. LESSOR's Failure to Enforce and Nonwaiver**

- A. No failure by LESSOR to insist upon strict performance of any term, condition or covenant of this Lease or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rentals during the continuance of any such breach shall constitute a waiver of any such breach or any such term, condition or covenant.

- B. No term, condition or covenant of this Lease required to be performed by LESSEE, and no breach thereof, shall be waived, altered or modified, except by written instrument executed by LESSOR.
- C. No waiver by LESSOR of any violation or breach of any of the terms, provisions, or covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Each term, condition, and covenant shall continue in full force and effect, and any other or subsequent default or breach may be enforced by the LESSOR as provided in this Lease.
- D. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of LESSOR's right to enforce any such remedies with respect to such default or any subsequent default.

## **ARTICLE VII**

### **GENERAL COVENANTS**

#### **Section 7.1. Condition and Status of Premises**

- A. LESSEE acknowledges it examined the Premises and accepts same in its present condition without any representation or warranty, express or implied in fact or by law by LESSOR as to the title, nature, condition or usability of the Premises for the purposes set forth in this Lease, all of said warranties being hereby expressly disclaimed by LESSOR.
- B. Without in any way limiting subsection A., LESSEE acknowledges it is familiar with and has knowledge of the contents of the Landfill Gas Assessment and the Landfill Gas Control Evaluation prepared by Hart Crowser, and copies have been made available for inspection and review at the Airport Manager's Office, Merrill Field Airport, 800 Merrill Field Drive, Anchorage, Alaska. The Landfill Gas Assessment and Landfill Gas Control Evaluation are incorporated herein by reference.

- C. LESSEE shall provide written notice to LESSOR immediately upon LESSEE becoming aware or having a reasonable belief that:
1. The Premises, or any adjacent property, is being, may be, or has been contaminated with any Hazardous Material or Substance; or
  2. Any Hazardous Material or Substance exists in, within, on or near the Premises or adjacent property.

**Section 7.2. LESSEE Responsibility for Authorized Visitors**

LESSEE accepts responsibility for all authorized users and visitors to and through its leasehold and is responsible for ensuring such users/visitors do not enter or violate MRI Air Operations Areas without authorization. LESSOR agrees to maintain reasonable control of its facilities to prevent unauthorized entry to MRI Airport Operations Areas.

**Section 7.3. Risk of Loss**

No destruction or damage to any building or improvement on the Premises by fire, rain, ice, snow, windstorm, earthquake, aircraft accident, or any other casualty or action of the elements shall entitle LESSEE to surrender possession of the Premises, to terminate this Lease, to violate any of its provisions, or to cause any rebate or abatement in rent when due or thereafter becoming due under the terms hereof.

**Section 7.4. Repair or Rebuilding**

Upon the destruction or damage to any building or structure by fire, rain, ice, snow, windstorm, earthquake, aircraft damage or any other casualty or action of the elements, LESSEE shall have the right to repair, restore or rebuild the building or structure within one (1) year after the date of such occurrence, or as per written agreement with the Airport Manager.

**Section 7.5. Condemnation**

- A. If all of the Premises, or any part thereof required for the reasonable use of the Premises, is taken by eminent domain, this Lease shall expire on the date when LESSEE is required to vacate the Premises, and rent shall be apportioned as of that date.

- B. If there is a taking of a part of the Premises not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect, and rent shall be equitably reduced based on the proportion by which the Premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority.
- C. Except for improvements constructed and paid for by LESSEE, LESSOR reserves all rights to damages to the Premises for any taking by eminent domain and LESSEE hereby assigns to LESSOR any right LESSEE may have to such damages or award. LESSEE shall make no claim against LESSOR for damages for termination of the Lease or interference with LESSEE's business. LESSEE shall have the right, however, to claim and recover from the condemning authority compensation for any loss for moving expenses or for interruption of or damages to LESSEE's business, provided such damages may be claimed only if awarded separately in the eminent domain proceeding and not as part of the damages recoverable by LESSOR.

**Section 7.6. Surrender of Premises**

At the expiration of any Lease term, upon termination of this Lease, upon reentry by LESSOR or otherwise, LESSEE shall peacefully and quietly surrender the Premises in as good a condition as at the beginning of the initial term, reasonable use and wear and damages by the elements excepted.

**Section 7.7. Disposition of Buildings and Improvements at Lease Expiration or Termination**

- A. All buildings, structures, alterations or improvements placed by LESSEE upon the Premises shall, at the expiration or termination of the lease, belong to LESSEE, except as otherwise provided in this Lease or as follows:
1. If LESSEE is in default or breach of this Lease, all such buildings, structures, alterations or improvements shall, at the option of LESSOR, revert to and become the property of LESSOR;

2. If LESSOR exercises its option to terminate this Lease and provide payment to LESSEE under Section 3.15 herein, all of the buildings, structures, alterations and improvements shall become the sole property of LESSOR.
- B. LESSEE may, at its option, sell such buildings, structures, alterations or improvements to a succeeding LESSEE except in the circumstances described below.
- C. LESSOR may, in its sole discretion, require LESSEE, at LESSEE's sole expense, to remove part or all of any building, structure, alteration and/or improvement including, but not limited to, fuel tanks and lines, and to partially or completely restore the Premises to the condition of the Premises at the inception of this Lease, where any one or more of the following circumstances exist as to any building, structure, alteration or improvement:
1. Any building, structure, alteration or improvement is not sold to a succeeding LESSEE; or
  2. Any building, structure, alteration or improvement is determined, in LESSOR's sole discretion, not to be in the LESSOR's best interests; or
  3. Any building, structure, alteration or improvement does not comply with written airport operation policies; or
  4. Any building, structure, alteration or improvement is determined, pursuant to written findings by LESSOR, to be a hazard to public health or safety; or
  5. Any building, structure, alteration or improvement constitutes a nuisance; or
  6. Any building, structure, alteration or improvement has existing building code violations; or
  7. Any building, structure, alteration or improvement creates landfill gas concerns; or

8. Any building, structure, alteration or improvement interferes with the operation of the landfill gas extraction system,
- D. In the event LESSOR exercises its rights under subsection C. above, it shall send written notice requesting such removal, and restoration of the Premises, within thirty (30) days after expiration or termination. LESSEE shall then, at its own expense, complete such removal and restoration within sixty (60) days of the date of such notice.

**Section 7.8. Holdover**

- A. In the event LESSEE shall holdover after the expiration or termination of this Lease for any cause whatsoever, LESSEE shall pay LESSOR rent at double the monthly rent rate specified herein for the entire time LESSEE remains in possession and, in addition thereto, LESSEE shall hold LESSOR harmless from all damages resulting from LESSEE's failure to surrender the Premises including, without limitation, claims made by a succeeding tenant resulting from LESSEE's failure to surrender the Premises.
- B. In the event LESSEE holds over, and remains in possession of the Premises after expiration of the term of this Lease, or after the date in any notice given by LESSOR to LESSEE terminating this Lease, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. The provisions of this section do not exclude LESSOR's rights of re-entry or any other right under this Lease.

**Section 7.9. Notices**

Any notices required under the terms of this Lease, including legal process, shall be sent in writing, by registered mail, or certified mail, or hand-delivery with written receipt, to the parties at the following addresses unless otherwise notified in writing. Such notices shall be deemed received when so sent:

LESSOR's Address: Office of the Mayor  
Municipality of Anchorage



P. O. Box 196650  
(632 W. 6<sup>th</sup> Avenue, Ste. 800)  
Anchorage, AK 99519-6650

With a copy to:

Municipality of Anchorage  
Merrill Field Airport, Manager's Office  
800 Merrill Field Drive  
Anchorage, Alaska 99501

LESSEE's Address: \*\*\*

\*\*\*

\*\*\*

LESSEE's Email \*\*\*

**Section 7.10. Rights or Remedies**

No right or remedy herein conferred upon or reserved to LESSOR is intended to be exclusive to any other right or remedy, but is intended to be in addition to any right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

**Section 7.11. Successors in Interest**

This Lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

**Section 7.12. Applicable Law and Forum**

This Lease, and the respective rights and obligations of the parties, shall be construed and interpreted in accordance with the laws of the State of Alaska. Any civil action concerning this Lease shall be brought in the courts of the Third Judicial District, State of Alaska, in Anchorage, Alaska.

**Section 7.13. Recordation of Lease**

The entire Lease, including all attachments and exhibits, shall be recorded at the LESSEE's sole expense, immediately following execution of the Lease.

**Section 7.14. Severability**

The invalidity or unenforceability of any provision of this Lease shall not affect any remaining provisions hereof and, in any such event, this Lease shall be construed and interpreted in all respects as if such invalid or unenforceable provision were omitted.

**Section 7.15. Gender and Plurality**

Unless the context of this Lease clearly requires a different interpretation or construction, all references to masculine, feminine or neuter genders shall be construed to refer to all such genders, and all references to the singular shall also include the plural, and vice versa.

**Section 7.16. Entire Agreement**

This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all other prior or contemporaneous agreements, oral or written, between the parties not included herein. No modifications, amendments, deletions, additions or alterations of this Lease shall be effective unless in writing and signed by authorized representatives of all the parties hereto. This Lease shall not be construed more strictly against one party than the other.

LESSOR:  
**MUNICIPALITY OF ANCHORAGE**

LESSEE:  
\*\*\*

By: \_\_\_\_\_  
Name – Michael K. Abbott  
Its: Municipal Manager

By: \_\_\_\_\_  
Name -  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_

Name – Paul Bowers, A.A.E.  
Its: Merrill Field Airport Manager

Date: \_\_\_\_\_

Attachments: Exhibit A & Exhibit B

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known and known to me to be the identical individual described in and who executed the within and foregoing LEASE as **Municipal Manager** of the Municipality of Anchorage, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**(CORPORATION)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared [INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF CORPORATION], the corporation named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the corporation to execute the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary Public in and for Alaska

My commission expires: \_\_\_\_\_

**(INDIVIDUAL)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PERSON SIGNING].

\_\_\_\_\_  
Notary Public in and for Alaska

My commission expires: \_\_\_\_\_

**(PARTNERSHIP)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PARTNER OR AGENT SIGNING], partner (or agent) on behalf of [INSERT NAME OF PARTNERSHIP], a partnership.

\_\_\_\_\_  
Notary Public in and for Alaska

My commission expires: \_\_\_\_\_

**(LIMITED LIABILITY COMPANY)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared

[INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF LIMITED LIABILITY COMPANY], the limited liability company named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the limited liability company to execute the foregoing instrument as the free act and deed of the said limited liability company for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared PAUL BOWERS, to me known and known to me to be the identical individual described in and who executed the within and foregoing LEASE as **Airport Manager**, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

# **MERRILL FIELD AIRPORT**

## **“The Premises”**

(lot diagram with legal description)

**Exhibit “A”**

# **MERRILL FIELD AIRPORT**

**Consent to Assignment of Lease**

**&**

**Consent to Assignment of Lease for  
Security Purposes**

**Exhibit “B”**

**AFTER RECORDING IN ANCHORAGE RECORDING DISTRICT**

**RETURN TO:**

Merrill Field Airport  
Municipality of Anchorage  
800 Merrill Field Drive  
Anchorage, AK 99501

**CONSENT TO ASSIGNMENT OF LEASE**

MOA – [Lessee]

The attached Assignment of Lease from \_\_\_\_\_,  
ASSIGNOR, to \_\_\_\_\_, ASSIGNEE, is hereby accepted and  
approved subject to the terms and conditions of the original lease dated  
\_\_\_\_\_, Recorded on \_\_\_\_\_ as Document  
No. \_\_\_\_\_, Records of the Anchorage Recording District, Third Judicial District,  
State of Alaska, by and between the MUNICIPALITY OF ANCHORAGE, LESSOR,  
and \_\_\_\_\_, LESSEE, and subsequent amendments  
thereto and assignments thereof ("Lease") and subject to the terms and conditions  
contained herein. Said Lease covers a parcel of land located within the Municipality  
of Anchorage, which is described as follows:

\*\*\*

(hereinafter referred to as Leased Premises)

This consent is given by the MUNICIPALITY OF ANCHORAGE without waiving  
any right of action or releasing ASSIGNOR or any subsequent ASSIGNEE(S) from  
any liability or responsibility under the aforementioned Lease, subsequent  
amendments thereto and assignments thereof.



In consideration of the consent of the MUNICIPALITY OF ANCHORAGE to this assignment, the ASSIGNOR unconditionally guarantees performance by the ASSIGNEE of all terms and conditions of the aforementioned Lease, subsequent amendments thereto, and assignments thereof.

Neither this consent nor the acceptance of rent by the MUNICIPALITY OF ANCHORAGE from ASSIGNEE shall release, relieve or in any manner modify the obligations of ASSIGNOR under the terms and conditions of the Lease, subsequent amendments thereto and assignments thereof.

In consideration of the consent of the MUNICIPALITY OF ANCHORAGE to this assignment, the ASSIGNEE hereby assumes all rights, duties and liabilities of ASSIGNOR pursuant to the terms and conditions of the aforementioned Lease, subsequent amendments thereto, and assignments thereof.

In consideration of the consent of the MUNICIPALITY OF ANCHORAGE to this assignment, the ASSIGNEE acknowledges that it takes this assignment with full knowledge of the contents of the Landfill Gas Assessment and all subsequent reports through the date of this Consent to Assignment of Lease, prepared for the MUNICIPALITY OF ANCHORAGE by its consultants including Hart CrowserEarth and Environmental Technologies, copies of which have been made available for inspection at the Airport Manager's Office, Merrill Field Airport, 800 Merrill Field Drive., Anchorage, Alaska, and which are incorporated herein by reference.

In consideration of the consent of the MUNICIPALITY OF ANCHORAGE to this assignment, the ASSIGNEE, in addition to all other provisions for access provided for in the Lease, subsequent amendments thereto, assignments thereof, and at law, specifically allows the MUNICIPALITY OF ANCHORAGE or its authorized agents, the right of access to the Leased Premises to continue monitoring and implementation of controls recommended in the Landfill Gas Assessment and subsequent reports prepared for the MUNICIPALITY OF ANCHORAGE by its consultants including Hart Crowser Earth and Environmental Technologies.

In consideration of the consent of the MUNICIPALITY OF ANCHORAGE, the ASSIGNEE agrees to be bound by all valid claims and valid defenses which may now exist or may hereafter develop between the MUNICIPALITY OF ANCHORAGE and the ASSIGNOR.

In consideration of the consent of the MUNICIPALITY OF ANCHORAGE to this assignment:

- A. Lessee, at its own expense, shall secure and maintain in full force at all times during the term of this Lease:
  - 1. Commercial general liability insurance, inclusive of airport premises liability insurance, with a single occurrence liability limit of \$1,000,000 insuring against liability of Lessee, its officers, contractors, licensees, agents, employees, guests, invitees and authorized representatives, arising out of and/or in connection with Lessee's use or occupancy of the Premises;
  - 2. Workers Compensation insurance with coverage for all employees engaged in work under this Lease in conformity with AS 23.30.
- B. The insurance required under this Section shall:
  - 1. Name the Lessor as an "additional insured";
  - 2. Each policy of insurance required by this section shall provide for advance notice to the Merrill Field Airport prior to cancellation in accordance with the policy. If the insurer does not notify Merrill Field Airport upon policy cancellation, it shall be the Lessee's responsibility to notify Merrill Field Airport of such cancellation.
  - 3. Be with an insurance company qualified to do business in the State of Alaska with a financial rating of at least "A" as rated in current Best's Insurance Reports.
  - 4. Include a waiver of subrogation clause where the insurer waives all rights of subrogation against Lessor for payments made under the policy; and

5. Contain a damage deductible for each and every loss that does not exceed \$5,000.00.
- C. Lessee shall provide Lessor with proof of insurance coverage in the form of a certificate of insurance and, if requested by Lessor, Lessee shall provide Lessor with a copy of the policy(ies). Failure to maintain insurance in effect shall constitute grounds for immediate termination of this Lease. Lessor may, at its option, purchase insurance and charge the expense thereof to Lessee; Lessee shall assume and pay any such expense.
- D. Lessor may adjust minimum insurance requirements by giving Lessee written notice of adjustment ninety (90) days prior to expiration of each five (5) year term of this Lease. Lessor may also adjust minimum insurance requirements at any time if Lessee's use of the Premises changes and, in such event, Lessor shall give Lessee thirty (30) days written notice of such adjustment.
- E. The requirements of insurance coverage do not relieve Lessee from any other obligation under this Lease.

Nothing in this consent is to be construed as a representation, ratification, or approval by the MUNICIPALITY OF ANCHORAGE, either express or implied, as to the validity of any of the terms, conditions, or provisions of any agreement and/or assignment document between ASSIGNOR and ASSIGNEE.

Nothing in this consent is to be construed as a consent by the MUNICIPALITY OF ANCHORAGE to any subsequent transaction. Any further mortgage, pledge, hypothecation, encumbrance, transfer, sublease, or assignment (hereinafter in this clause referred to collectively as "encumbrance") of the Leased Premises, or any part or portion thereof, shall first be approved in writing by the MUNICIPALITY OF ANCHORAGE. In the event there is an existing Sublease or other encumbrance which has not been approved in writing by the MUNICIPALITY OF ANCHORAGE, such Sublease or other encumbrance must be disclosed and consented to in writing by the MUNICIPALITY OF ANCHORAGE, prior to this Consent to Assignment of

Lease becoming effective. Failure to obtain the MUNICIPALITY OF ANCHORAGE'S required written approval of a prior or subsequent encumbrance will render such encumbrance voidable and, at the MUNICIPALITY OF ANCHORAGE'S election, shall constitute a default. Occupancy of the Leased Premises by a prospective transferee, sublessee, or assignee before approval of the transfer, sublease or assignment by the MUNICIPALITY OF ANCHORAGE shall constitute a breach of the Lease.

If the Assignee hereunder is a corporation, unincorporated association, partnership, joint venture, or limited liability company, the encumbrance, transfer or sale of any stock or interest in said corporation, association, partnership, joint venture, or limited liability company in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of the Lease.

By signature below, the ASSIGNOR AND ASSIGNEE accept the terms and conditions hereof; the ASSIGNEE assumes the terms and conditions of the aforementioned Lease, subsequent amendments thereto and assignments thereof; and the Lessor consents to the Assignment.

ASSIGNOR:  
\*\*\*

By: \_\_\_\_\_

Name -

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ASSIGNEE:  
\*\*\*

By: \_\_\_\_\_

Name -

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_

Name -

Its: Municipal Manager

Date: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_

Name – Paul Bowers, A.A.E.  
Its: Merrill Field Airport Manager

Date: \_\_\_\_\_

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known and known to me to be the identical individual described in and who executed the within and foregoing CONSENT TO ASSIGNMENT OF LEASE as **Municipal Manager** of the Municipality of Anchorage, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**(CORPORATION)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared [INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF CORPORATION], the corporation named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the corporation to execute the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(LIMITED LIABILITY COMPANY)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared [INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF LIMITED LIABILITY COMPANY], the limited liability company named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the limited liability company to execute the foregoing instrument as the free act and deed of the said limited liability company for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(INDIVIDUAL)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PERSON SIGNING].

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(PARTNERSHIP)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PARTNER OR AGENT SIGNING], partner (or agent) on behalf of [INSERT NAME OF PARTNERSHIP], a partnership.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared PAUL BOWERS, to me known and known to me to be the identical individual described in and who executed the within and foregoing CONSENT TO ASSIGNMENT OF LEASE as **Airport Manager**, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_



**AFTER RECORDING IN ANCHORAGE RECORDING DISTRICT**

**RETURN TO:**

Merrill Field Airport  
Municipality of Anchorage  
800 Merrill Field Drive  
Anchorage, AK 99501

**CONSENT TO ASSIGNMENT OF LEASE FOR SECURITY PURPOSES**

MOA – [Lessee]

1. Consent. The Municipality of Anchorage, (Lessor) under that certain lease with \_\_\_\_\_, (Lessee), hereinafter the "Lease" dated \_\_\_\_\_ and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_, Records of the Anchorage Recording District, Third Judicial District, State of Alaska, of the following described real property:

\*\*\*

("Leased Premises")

hereby consents to the assignment of the lease for security purposes by Lessee (Assignor) to \_\_\_\_\_ (Assignee). The purpose of this consent is to allow Lessee to secure a loan, the proceeds of which are to be used for leasehold development and/or operations on the property described above.

2. Possession by Assignee. Assignee may take possession of the Leased Premises and vest in the interest of Lessee in the above-described lease upon the performance of the following conditions:

- a) The payment to Lessor of any and all sums due to Lessor under the Lease including, but not limited to accrued unpaid rent.

- b) The sending of a written notice to Lessor and Lessee of Assignee's intent to take possession of the premises and assume the Lease.
- c) The curing of all defaults not remediable by the payment of money within an additional sixty (60) days of the date upon which such default was required to be cured by the Lessee under the terms of the Lease.

Upon performance of the above conditions, Assignee agrees to be bound by all of the terms and conditions of the Lease and any amendments thereto or assignments thereof.

3. No Liability of Assignee Without Possession. Assignee shall have no liability or obligation under the Lease unless or until it sends to Lessor the written notice described in paragraph 2(b), above. Nothing in this consent nor in the taking of possession of the Leased Premises and assumption of the Lease by Assignee or a subsequent Assignee shall relieve, release, or in manner modify the obligations of Lessee to Lessor under the Lease.

4. Termination of Lease by Lessor. If, by reason of any default of Assignor, the Lease shall be terminated at the election of Lessor prior to the stated expiration date thereof, Lessor shall give written notice to Assignee of the termination of the Lease by certified mail sent to the following address: \_\_\_\_\_ unless subsequently advised in writing of a more current address

Upon receipt of a written request from Assignee within thirty (30) days of the sending of the previously described notice, Lessor agrees to enter into a new lease with Assignee for the remainder of the term of the original Lease at the same rent and on the same terms and conditions of the original Lease.

5. Current Lease in Effect. Except as otherwise expressly stated herein, nothing in this consent to assignment is intended to amend or alter any of the terms and conditions of the Lease or any amendments thereto previously executed by Lessor and Lessee, all of which terms and conditions remain in full force and effect. In the event of any conflict among any provisions of this consent, the Lease as amended

and any provisions of security agreements including assignments of lease and deeds of trust, the provisions of this consent and the Lease as amended shall govern the rights of Lessor. Nothing in this consent is to be construed as a consent by Lessor to any subsequent assignment.

**REQUEST FOR CONSENT TO ASSIGNMENT  
OF LEASE FOR SECURITY PURPOSES**

The Assignor and Assignee hereby request the consent of Lessor to the assignment of the lease described herein for security purposes in accordance with the foregoing terms and conditions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ASSIGNOR:**  
\*\*\*

By: \_\_\_\_\_  
Name -  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNEE:**  
\*\*\*

By: \_\_\_\_\_  
Name -  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**MUNICIPALITY OF ANCHORAGE**

By: \_\_\_\_\_  
Name -  
Its: Municipal Manager

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

By: \_\_\_\_\_  
Name – Paul Bowers, A.A.E.  
Its: Merrill Field Airport Manager

Date: \_\_\_\_\_

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known and known to me to be the identical individual described in and who executed the within and foregoing CONSENT TO ASSIGNMENT OF LEASE FOR SECURITY PURPOSES as **Municipal Manager** of the Municipality of Anchorage, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**(CORPORATION)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared [INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF CORPORATION], the corporation named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the corporation to execute the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(LIMITED LIABILITY COMPANY)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared [INSERT NAME OF PERSON SIGNING], known to me to be the [INSERT TITLE OF PERSON SIGNING] OF [INSERT NAME OF LIMITED LIABILITY COMPANY], the limited liability company named in the foregoing instrument, acknowledged to me that he/she had, in his/her official capacity is authorized by the limited liability company to execute the foregoing instrument as the free act and deed of the said limited liability company for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(INDIVIDUAL)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PERSON SIGNING].

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**(PARTNERSHIP)**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [INSERT NAME OF PARTNER OR AGENT SIGNING], partner (or agent) on behalf of [INSERT NAME OF PARTNERSHIP], a partnership.

\_\_\_\_\_  
Notary public in and for Alaska  
My commission expires: \_\_\_\_\_

**NOTARY**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared PAUL BOWERS, to me known and known to me to be the identical individual described in and who executed the within and foregoing CONSENT TO ASSIGNMENT OF LEASE FOR SECURITY PURPOSES as **Airport Manager**, freely and voluntarily on behalf of the Municipality of Anchorage, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

## APPENDIX 2

Municipality of Anchorage  
Merrill Field Airport (MRI)

### **Anchorage Municipal Code Provision**

[https://www.municode.com/library/ak/anchorage/codes/code\\_of\\_ordinances](https://www.municode.com/library/ak/anchorage/codes/code_of_ordinances)

#### **Chapter 11.60 Municipal Airports**

#### **Title 25 Public Lands**

# APPENDIX 3

## Municipality of Anchorage Merrill Field Airport (MRI)

### **MERRILL FIELD AIRPORT TIMELINE FOR LEASE REVIEW**

#### **A. Two Year Before Lease to Expire**

1. Merrill Field determines whether to enter into new lease:
  - a. Master Plan Considerations
  - b. Methane Considerations
  - c. Other
2. If new lease to be considered, Merrill Field establishes standards for leasehold:
  - a. Consult with Fire Dept, Building Safety and Solid Waste Services
  - b. Set standards for proposed use, quality and level of service to be provided, nature of improvements, alterations, repairs to be performed, public interest concerns
  - c. Perform private engineering inspection, if needed

#### **B. One Year Before Lease to Expire**

1. Notice Standards to existing leaseholder and enter negotiations; or notice standards and request applications and proposals for leasehold to public
2. Receive & review Applications and Proposals
3. Determine if any of following are needed and perform as necessary:
  - a. Background check on applicants
  - b. Change of occupancy inspection
  - c. Code compliance inspection
  - d. Zoning review
  - e. Appraisal
  - f. Environmental audit

#### **C. Six Months Before Lease to Expire**

1. Complete negotiations with existing leaseholder or select successful leaseholder; notify all applicants of decision; notify existing tenant of decision
2. Prepare Proposed lease and send to tenant to execute
3. Tenant signs lease and returns within 14 days
4. Forward lease recommendation to Assembly for approval
5. Assembly acts on lease
6. If lease approved by Assembly, send lease to Municipal Manager for signature
7. Send copy of fully executed lease to tenant
8. Record entire lease including attachments and exhibits



# APPENDIX 4

## Municipality of Anchorage Merrill Field Airport (MRI)

### **MERRILL FIELD AIRPORT LEASE TERM GUIDELINES**

Merrill Field Airport is owned by the Municipality of Anchorage and as a municipal airport is subject to the Anchorage Charter and Anchorage Municipal Code, including chapter 11.60 dealing with municipal airports and chapter 25.30 dealing with disposal of municipal lands (because a lease is considered a disposal of land). Leases for land on Merrill Field Airport are also subject to and must comply with local laws and regulations as well as federal laws and regulations.

The lease term guidelines attempt to establish lease terms on the following basis:

1. **New Lessee**

Using the chart below, the lease term for a new Lessee shall be based upon:

- a. The purchase price paid for existing permanent improvements or the fair market value of the existing permanent improvements, whichever is less; and
- b. The cost of any new improvements to be placed on the property by the new Lessee.

2. **Existing Lessee**

Using the chart below, the lease term for an existing Lessee will be based upon:

- a. The fair market value of existing permanent improvements on the property belonging to the existing Lessee; and
- b. The cost of any new improvements to be placed on the property by the existing Lessee.

As a general matter, the term of the lease also has to address considerations such as the use of the property, the airport master plan recommendations, regulatory requirements and the benefits to the Municipality resulting from the use and/or improvement of the property.

**Minimum Improvement Commitment**

**Maximum Term**

\$0	5 years
\$37,500	10 years
\$75,000	15 years
\$112,500	20 years
\$150,000	25 years
\$187,500	30 years
\$225,000	35 years
\$262,500	40 years
\$300,000	45 years
\$337,500	50 years
\$375,000	55 years

The Municipality may determine, in its sole discretion, it is in the Municipality's best interest to grant a shorter term for a given investment in order to accommodate future development plans, changing regulatory requirements, or other similar factors.

## **APPENDIX 5**

Municipality of Anchorage  
Merrill Field Airport (MRI)

### **Requisite Construction-on-MRI Documents CHECKLIST**

This CHECKLIST is for MRI staff use to track status of documents that must be Received and/or Approved by Merrill Field Airport Management as part of the Construction Process on MRI. It can also serve Lessees as a useful tracking mechanism for the same purpose.

MRI Leasing Point of Contact and phone: ...

Lease Agreement dated (xx/xx/xxxx), (site legal description),  
(Lessee legal name), (address), (Lessee Point of Contact, phone #)

Construction improvement requirements according to Article II, Section 2.1 of the Lease Agreement. The improvements include the construction of (project description). See Appendix 3 for Minimum investment of Improvements vs. Maximum allowable Term if requesting a new lease in conjunction with these improvements.

<u>ACTIVITY</u>	<u>MRI INITIAL &amp; DATE</u>	
1. <b>Call 811 dig line for underground locates before any dig <u>AND</u> call Merrill Field @ 343-6303 for airport utilities before you dig*</b>	_____	_____
2. Received preliminary plans and specifications (Section 2.2)	_____	_____
3. Approved preliminary plans and specifications (Section 2.3)	_____	_____
4. Received compliance with FAA Part 77 FAR (Section 2.6)	_____	_____
5. Received final plans and specifications ( <u>PDF file</u> ) (Section 2.4)	_____	_____
6. Approved final plans and specifications (Section 2.4)	_____	_____
7. Received Lessee Site Specific Landfill Gas Plan (Section 2.1)	_____	_____
8. Received copy of MOA building permit (Section 2.9)	_____	_____
9. Received payment and performance bond (Section 2.11)	_____	_____
10. Commencement of construction (Section 2.7)	_____	_____
11. Completion of construction (Section 2.8)	_____	_____

12. Received copy of Certificate of Occupancy (Section 2.8) \_\_\_\_\_
13. Received proof of actual cost of improvements if required as part of \_\_\_\_\_  
requesting a new lease term. (See appendix 3 investment vs. term)
14. Received copy of as-built surveyed plot plan (Section 2.14) \_\_\_\_\_

**\* 1. Note: Calling 811 DOES NOT trigger a MRI locate.**  
**A specific call to 907-343-6303 is necessary to initiate such locate.**  
Airport Utilities are totally separate from the 811 general utility locates, as MRI owns and maintains airport utilities such as runway/taxiway/apron lights, storm drains, fiber optic cables, power to vehicle gates and tie-down aprons.

**NOTE:**

**ALL ABOVE DOCUMENTS MAY BE SUBMITTED IN PDF FORMAT.**

Completed Checklist shall be filed in Lessee Lease file as a permanent record providing proof of Leaseholder satisfying Lease Agreement improvement requirements. After the Checklist is complete, MRI will provide a copy of the Checklist to the Lessee for their files.

# APPENDIX 6

Municipality of Anchorage  
Merrill Field Airport (MRI)

## Merrill Field Landscaping Guidelines

Merrill Field Airport (MRI) has developed airport landscaping guidelines that enable airport tenants to create a long term compatible landscaping plan that engenders airport symmetry while complying with Municipality of Anchorage (MOA) code mandated requirements for MRI business landscapes. The intent of these guidelines is to provide a positive aesthetic environment to all airport users while accommodating airport safety considerations.

The three primary objectives for landscaping on Merrill Field are:

1. Preserving airfield object-free areas, to ensure aircraft freedom of movement and to prevent issues that would cause obstructions or visibility problems for pilots and/or other airfield operators.
2. Utilizing landscaping plants and materials that do not attract unwanted wildlife or present other hazards to aeronautical activity.
3. Creating a positive impression for visitors and customers, as well as attracting business, enhancing the workplace and improving the overall airport appearance.

With these considerations in mind, the following basic guidelines should be incorporated into the MRI landscaping planning process;

### 1. General landscaping Guidelines

- Non-AOA (Air Ops Area) areas within approximately 20 feet of any permanent structure should be landscaped if not paved. Landscaping includes one or more of the following: mowed grass maintained at a height less than 5 inches, shrubs or bushes, flowering plants, perennial ground cover, trees and/or decorative aggregate material and/or decorative bark (latter materials only in areas that will not be blown around by prop wash or wind).
- No landscaping in or on aprons or aircraft movement areas. (AC 150/5300-13A Airport Design, Chapter 5, 506.Taxiway/Object Clearance)
- Lessees are required to eliminate or control noxious weeds.
- Lessees are required to trim trees and bushes so as not to cause hazard to the public; or interfere with the public lighting or street lighting; not to interfere with or obstruct Line Of Sight views for security cameras; and remain at least 9 feet clear of above ground electrical, telephone, or other utility lines. No flowers, shrubs or trees shall be allowed to overhang or prevent the free use of any sidewalk or roadway, or street maintenance activity, except that deciduous trees may extend over the sidewalk when trunks/limbs are trimmed to a height of eight feet above the sidewalk, and 14 feet above a roadway. Symmetry/balance in such trimming should be maintained – i.e. not trimmed 8' on the sidewalk side and 14' on the street traffic overhang side. (ANSI A300)

- Lessees must treat or remove diseased trees or plants, and treat or remove any plant which creates a nuisance by virtue of being diseased or insect ridden or that creates any other applicable hazard. (ANSI A300)
- Lessees must remove any tree which has become dead or is in such a condition to be hazardous to the public. (MC 24.70.030 Removal of dead, hazardous or illegally located trees)
- No tree may be planted on a leased private property within two feet of any sidewalk or pavement. (MC 24.70.020 Responsibilities of abutting property owners; setback of trees from street or sidewalk)
- No tree, shrubs or flowers over two feet in height shall be planted or maintained in that portion of any planting strip lying within 35 feet of the intersection of the curb-line of any intersecting street. (MC 24.70.040 Maximum height of plants in parking strips at intersections)
- Trees planted at curves or near intersections must be trimmed so that they do not impede the line-of-sight required to safely scan for traffic.

## 2. Plant Types

Each new species of plant life introduced into the airport property should be reviewed to ensure that environmental conditions will allow growth and do not pose a safety threat by attracting unwanted wildlife.

The following guidelines apply when selecting plants for a landscaping project on MRI:

- No berry-bearing bird/wildlife attractant types. (MC 11.60.320 feeding or attracting birds. It is strictly prohibited to feed birds or use any object or device to attract birds on airport property)
- No high-height (>30' AGL mature height) trees. (See "Clear Zone Requirements &, FAR Part 77, subpart C, Section 21.65.040, FAR Part 77.11.A or as depicted on airport height map)
- No tree or bush types that produce seed pods or drips sap, such as cottonwood, mountain ash, etc.
- Plants should be tolerant to existing soil and moisture conditions as well as the climate and temperature of Anchorage.
- A mature tree configuration should be of a type that enables continued use of sidewalks and roadways without having to trim the tree base (i.e., mature conifer base circumferences should fit within site without needing trim-to-fit).
- Tree types should be fruitless or otherwise free of parts that fall and could damage vehicles, clog drains, or make pavement slippery.
- Bushes planted should have relative symmetry to site (low mature bush heights where line of sight around corners at an intersection is important; higher bushes where screening is desired).
- No trees with expansive root systems that will cause damage to the sewers, sidewalks or pavements. (MC 27.70.010 Prohibited Trees)
- Plants should also fit the site aesthetically and serve an intended function (such as shade, buffer, focal point, etc.).

## 3. Clear-zone Requirements

All landscaping plants and modifications are subject to the object-free areas and obstacle-free zones specified in the Airport Layout Plan and FAR Part 77: Objects Affecting Navigable Airspace. These include but are not limited to the following protected zones:

- 4600' x 500' centered on Runway 7-25 (Airport Layout Plan pg 4)

#### Merrill Field Landscaping Guidelines

- 3120' x 500' centered on Runway 16-24 (ALP pg 4)
- 2480' x 250' centered on Runway 5-23 (ALP pg 4)
- No runway threshold penetrations (ALP pg 4)
- No above ground level (AGL) landscaping that penetrates Runway Approach Surfaces (ALP pgs 6-8) or taxiway edge margins, runway protection zones, object free areas, wingtip clearance areas, clearways and safety areas specified in the ALP.

(For further details please consult the Merrill Field Airport Layout Plan or contact the MRI Management Office or visit the site below in 'Additional Resources')

#### 4. Landscaping Approval Procedure

1. Develop a site-specific draft landscaping plan for submittal to MRI Management, considering and incorporating the above guidelines, to include:
  - A. Types of plants/trees to be planted
  - B. Location around the site
  - C. Timeline for the planting/installation process
  - D. Name and contact info of responsible agent for landscaping maintenance
2. Obtain approval from MRI management
3. Submit site landscaping plan as part of building permit process (if applicable)
4. Provide copy of landscaping maintenance contract (if applicable) to MRI office
5. Schedule final inspection from MRI management

#### 5. Additional Reference Resources

- For a catalogue of suggested plants for Alaska, see the American Society of Landscape Architects (ASLA) Alaska Chapter's website at ([www.alaskaplants.org](http://www.alaskaplants.org)).
- ASLA Landscaping Plants for Alaska, University of Fairbanks Cooperative Publication (<http://www.alaskaplants.com>)
- Municipality of Anchorage Standards and Specifications (MASS) Section 75.01 Landscaping and Grounds Maintenance
- American National Standards Institute (ANSI) A300 American National Standards for Tree Care Operations - Tree, Shrub and other Woody Plant Maintenance, Standard Practice
- American National Standards Institute Standard Z133 - Safety Requirements for Arboriculture
- Municipal Code (MC) 24.15.030 Landscaping Standards
- MC 24.70 Trees and Other Plants
- MC 21.65 Airport Height Zoning Requirements
- 14 CFR Part 77: Safe, Efficient Use and Preservation of Navigable Airspace; §77.17 Obstruction Standards, Civil Airport Imaginary Surfaces
- FAA AC 150/5370-10D, Standards for Specifying Construction of Airports, Part X - Turfing
- FAA AC 150/5190-7, Minimum Standards for Commercial Aeronautical Activities
- FAA AC 150/5300-13, Airport Design/Runway Protection Zone
- Merrill Field Airport Layout Plan (ALP): Runway Protection Zone Dimensions, Object Free Areas, Taxiway Dimensions/Object-free Areas/Safety Areas, Approach Surfaces ([http://www.faa.gov/airports/alaskan/airports\\_resources/media/alps/ALP\\_Merrill\\_Field.pdf](http://www.faa.gov/airports/alaskan/airports_resources/media/alps/ALP_Merrill_Field.pdf))



# Municipality of Anchorage



## Handout AG.14

### Code Compliance Inspections

A Code Compliance Inspection is an inspection of an existing structure or mobile home to determine if it meets the Building Codes enforced by the Municipality. All aspects of the construction of the building are inspected: Structural, Electrical, Plumbing, Mechanical and by the Fire Department if it is a commercial structure. Code Compliance Inspections may be made under the following conditions:

1. As a prerequisite to the issuance of a building permit for the remodeling of, or addition to, an existing structure if required by the Plan Review Engineer.
2. An inspection request or complaint about deficient conditions existing within a structure.
3. As a prerequisite to the moving/relocating of any structure.
4. As a prerequisite to the moving/relocating of any mobile home if older than a 1973 model.

**MOBILE HOME FEE:** \$150.00/hour/inspector with a minimum \$150 charge.

**RESIDENTIAL FEE:** Residential is defined as a single-family or duplex.  
\$150.00/hour/inspector with a \$450.00 minimum charge.

**COMMERCIAL FEE:** Commercial is defined as a tri-plex, apartment complex, or business building.  
\$150.00/hour/inspector with a \$600.00 minimum charge.

### CODE COMPLIANCE INSPECTIONS MAY REVEAL THE FOLLOWING ITEMS:

1. Substandard Construction - Building was not built in conformance with the current International Building Code. Correction of substandard violations will be recommended but are not required.
2. Fire and Life Safety Deficiencies - Those violations which may pose an imminent threat to life or safety and must be corrected.
3. Zoning Requirements - Violations of the zoning code could be noted that owners would be required to correct.

**A CODE COMPLIANCE INSPECTION CAN BE MADE FOR ANYONE WHO HAS THE RIGHT OF ENTRY TO THE PREMISE INVOLVED. REQUESTS FOR CODE COMPLIANCE INSPECTIONS MUST INCLUDE AN AFFIDAVIT OF RECOGNITION OF LEGAL CONSEQUENCES OF FIRE AND LIFE SAFETY DEFICIENCIES IN AN EXISTING BUILDING SIGNED BY THE OWNER OF THE INVOLVED PROPERTY.**

Code Compliance Inspection requests must be prepaid at the Municipal Permit Office at 4700 Elmore Road. Code Compliance Inspections are coordinated by the Code Abatement section at 343-8301. On-site inspections may be accomplished by either Code Abatement Officer or other appropriate Municipal inspectors.

Sharen A. Walsh, Building Official

DATE: June 22, 2012

(Ref. 96-01, 99-02, 00-03; 06-02, 06-12)