

**AFTER RECORDING IN ANCHORAGE RECORDING DISTRICT**

**RETURN TO:**

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

**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:

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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 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 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 7.8, 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. 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, fair market rent for the Premises.
- B. The rent may be adjusted annually by Lessor by adoption by ordinance of the Anchorage Municipal Assembly of 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 Merrill Field, part or all of the revenue requirement of such budget.
- C. The rent shall be subject to adjustment at five (5) year intervals to achieve fair market rent, the first adjustment date to be (5) years following the Commencement Date. The rent shall be adjusted in the following manner:
  - 1. Six (6) months prior to termination of the initial five (5) year period, or any subsequent five (5) year period ("current five (5) year period"), Lessor shall propose the rent for the next five (5) year period of the Lease term. The parties thereafter may, by mutual agreement, fix rent for such five (5) year period. If an agreement is not reached ninety (90) days prior to the end of the current five (5) year period, the fair market rent of the

Premises shall be determined by an appraiser selected by Lessor who shall:

- a. Be a member of the American Institute of Real Estate Appraisers;  
and
- b. Have experience in appraising properties similar to the Premises ("Qualified Appraiser").

If either Lessor or Lessee, or both Lessor and Lessee, shall disapprove of the fair market rent of the Premises so determined, the dissatisfied party (or parties) may then designate another Qualified Appraiser who shall conduct a second (or additional) independent appraisal(s) of the Premises. If only one party is dissatisfied and the second appraisal differs from the initial appraisal by less than two percent (2%), then the average of the first and second appraisals shall be deemed the fair market rent of the Premises. If the second appraisal differs from the initial appraisal by more than two percent (2%), either Lessor or Lessee shall have the right to designate a third Qualified Appraiser to conduct a third independent appraisal of the fair market rent of the Premises. The fair market rent of the Premises shall be deemed to be the average of the two appraised values closest to one another. If neither Lessee nor Lessor requests a third appraisal, the average of the first and second appraisals shall be deemed the fair market rent of the Premises. If both parties shall be dissatisfied and have each designated Qualified Appraisers to conduct additional independent appraisals, then the fair market rent of the Premises shall be deemed to be the average of the

two appraisals closest to one another. The cost of appraisals shall be divided and borne equally between Lessor and Lessee.

- D. During the pendency of any determination of 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 1.5. Determination of Fair Market Rent**

- A. The fair market rent of the Premises shall be determined by a written appraisal by a disinterested, independent, qualified member of the American Institute of Real Estate Appraisers experienced in appraising commercial real estate and aviation properties, selected for this purpose as outlined in Section 1.4.
- B. 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. The parties acknowledge certain property at Merrill Field may not currently or in the future be leased for a fair market rent. The returns received by Lessor from other aviation Leases at Merrill Field, therefore, shall not be used exclusively by the appraiser to determine fair market rent. 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 aviation restricted use.

C. Lessor shall send written notice to Lessee of the amount determined to be fair market rent, together with a copy of the appraisal.

**Section 1.6. Security Deposit**

No security deposit is required.

**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":

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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. 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, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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. 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 specification. 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**

Lessee shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations 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**

If Lessee has not commenced construction of the Improvements by, on or before the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, 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 by, on or before the \_\_\_ day of \_\_\_\_\_, 20\_\_\_. Construction shall be deemed completed when the Improvements are substantially completed and capable of the use intended. 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. Bond**

No work described herein with an cost estimated to exceed \$100,000 shall be commenced by Lessee until Lessee or Lessee's contractor provides to Lessor a surety performance and payment bond from a company acceptable to Lessor, in an amount equal to One-hundred ten percent (110%) of the estimated cost of the Improvements. Said bond shall guarantee completion of the work by Lessee or Lessee's contractor in accordance with the plans and specifications approved by Lessor, and shall also guarantee the payment by Lessee or Lessee's contractor of all subcontractors' charges and all other persons and firms supplying services, labor, materials or supplies in connection with the work.

**Section 2.12. Inspection**

During construction, Lessor shall have the right, from time to time, to inspect the Improvements and, in the event such construction or at any time prior to the issuance of a final certificate of occupancy, Lessor shall determine 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, omission or other respect Lessor claims construction 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:

The construction, operation and maintenance of \*\*\*.

The use of the \*\*\* 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 and the FAA 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 and the FAA, 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. § 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 Federal Aviation Administration**

- 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. 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.
- B. Lessee, in its use and occupancy of the Premises, shall not discriminate against any person or class of persons by reason of race, color, creed or national origin.
- C. Lessor, upon ten (10) days notice to Lessee of any violation of subsection A. or B., 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 requirements of subsection A. or B. Any service or rates regulated by a State or Federal regulatory agency shall be deemed in compliance with the requirements of subsection A. or B. until shown to be otherwise in an appropriate proceeding before the agency. 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.

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

**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, or sex, 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 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**

Lessee shall not, without Lessor's prior written consent, place or erect any sign of any nature on any part of the Premises. Such consent shall not be unreasonably withheld as to one flat sign of reasonable size bearing Lessee's trade 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.

**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 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. Any contract or agreement for labor, services, materials or supplies to be furnished in connection with construction or alteration of any improvement to the Premises 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. Before commencement of any work, 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. Lessee 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. No work described in subsection A., with a cost estimated to exceed \$100,000, shall be commenced by Lessee until it provides to Lessor, at its sole cost and expense, a surety performance and payment bond from a company acceptable to Lessor in an amount equal to 110% of the estimated cost of the improvements to be accomplished. Said bond shall guarantee completion of the work by Lessee's contractors in accordance with the plans and specifications approved by Lessor and shall guarantee payment by such contractors of all subcontractors' charges and all other persons and firms supplying services, labor, materials or supplies in connection with the work.
- F. 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 1.4.C. 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 ensuring 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. Contain a clause that the insurer shall not cancel or change the insurance without first giving Lessor thirty (30) days prior written notice;

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 fifty-one-percent (51%) 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 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 option 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. No waiver by Lessor of any violation or breach of any of the terms, provisions, and 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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 of any breach shall affect or alter any term, condition or covenant of this Lease, and each such term, condition or covenant shall continue in full force and effect with respect to any other then existing or subsequent default or breach thereof, and any other or subsequent default or breach may be enforced by the Lessor as provided in this Lease.

**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. 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 7.3. 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 7.4. 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 7.5. 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 7.6. 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 7.7. 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 7.8. 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: \*\*\*  
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**Section 7.9. 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 7.10. 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 7.11. 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 7.12. 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 7.13. 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 7.14. 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.



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                    )





