MATERIAL SALE AGREEMENT

THIS MATERIAL SALE AGREEMENT ("Agreement") is entered into the last date signed below ("Effective Date") by and between the **UNIVERSITY OF ALASKA**, a corporation created under the Constitution and laws of the State of Alaska, whose address is Facilities and Land Management, 1815 Bragaw Street, Suite 101, Anchorage, Alaska 99508-3438 ("University") and **OFFEROR**, whose address 123 ABC Street, Anchorage, Alaska 99508 ("Purchaser"), collectively the University and the Purchaser are referred to as ("Parties").

WHEREAS, the University is the owner of that certain real property located in the Palmer Recording District, Third Judicial District, State of Alaska, and described as follows:

(INSERT LEGAL DESCRIPTION HERE)

SUBJECT HOWEVER, TO all reservations, easements, restrictions, covenants, conditions, rights of way, encumbrances, exceptions and other matters of record, and reservations in the Federal Patent or other conveyance by which the Grantor acquired title,

("Property"); and

WHEREAS, the Purchaser has made an offer to purchase material (as hereinafter defined), as evidenced by an offer dated _____**[Date]**_____ and the University is willing to sell the Material.

NOW THEREFORE, in consideration of the promises herein contained, the University hereby agrees to sell to Purchaser, and Purchaser agrees to buy from the University, the material on the terms and conditions as set forth below:

1. **MATERIAL EXTRACTION FROM PROPERTY.** Subject to the terms and conditions of this Agreement, the University hereby agrees to allow Purchaser to enter upon the Property for the sole and limited purpose of extracting pit run sand and gravel, silt, clay, and all other soil materials whether or not similar to the foregoing ("Material") from the Property in accordance with the terms of this Material Sale Agreement. The Purchaser is limited to extracting _____ (ENTER NUMBER) cubic yards of material, from the mine area depicted on Exhibit ____, unless the University inspects the Property and expressly and in writing notifies the Purchaser that it may proceed to excavate more than _____ (ENTER NUMBER) cubic yards of material during the term hereof. Notwithstanding any other provision contained herein, Purchaser shall not excavate below the elevation of One Hundred Eighty (180.00) feet above sea level in the mine area.

2. **NON-EXCLUSIVE USE.** The Purchaser's use of the Property pursuant to this Agreement is non-exclusive and subordinate to other University uses. The University reserves the right to grant other uses respecting the Property so long as such uses do not materially interfere with Purchaser's rights hereunder.

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3. TERM. The term of this Agreement shall commence on the Effective Date herein and shall automatically terminate at **11:59 P.M.** on **____[Date]_____**, unless sooner terminated as herein provided ("Term").

4. EXTENSION OF TERM. Upon mutual agreement of both Parties, and provided Purchaser is in full compliance with the terms and conditions of this Agreement to the University's reasonable satisfaction, the Term of this Agreement may be extended for up to **_____ (__)** additional **_____ (__) YEAR** periods. Purchaser shall provide written notification to the University of its desire to extend the Term of this Agreement a minimum of **_____ (__) MONTHS** prior to the termination date of this Agreement. Purchaser understands and agrees that the University may unilaterally decide not to extend the Term of this Agreement and that the University may unilaterally reject, with or without cause, any request for a Term extension.

5. ROYALTY.

A. Royalty Rate. Purchaser shall pay _____ AND ___/100 DOLLARS ($_.___) per cubic yard, being THE MOST CURRENT RATE PER YARD ACCORDING TO THE MOST CURRENT DNR "USE FEE SCHEDULE" ISSUED PER 11AAC 71.090 and attached as Exhibit X, ("Royalty") to the University for each cubic yard of Material of any kind (without adjustment, limitation or exclusion for the quality or grade of such material, or the percentage of fine or silty material contained therein) extracted and removed from the Property. Royalty rate is based strictly on the attached Exhibit X – "Use Fee Schedule" without exception.

B. Minimum Royalty Payment Obligations Due to the University. Regardless of the amount of Material actually extracted from the Property, Purchaser agrees to pay the University a minimum of **_____ AND NO/100 DOLLARS ($___.__)** in Royalty by ENTER DATE ("Minimum Payment Obligation"). The Minimum Payment Obligation shall be paid to the University by the Purchaser as follows:

(i) Purchaser shall pay to the University the amount of **_____ AND NO/100 DOLLARS ($___.__)** as an Advance Royalty. Purchaser may credit this amount against future royalty payments due the University during the month of ENTER DATE or for any Royalty due after the extraction and removal of _____ (ENTER NUMBER) cubic yards, subject to the satisfaction of its obligation to complete the Minimum Payment Obligation to the University.

(ii) The obligation to pay the University all amounts set forth in **(i)**, above is absolute, and the University will not pro rate or allocate Purchaser's obligation to pay such amounts based upon the extraction and sale of less than the amounts of Material necessary to reach these payment amounts. For example, in calculating Purchaser's obligation to pay to the University **_____ AND NO/100 DOLLARS ($___.__)** ENTER DATE, the University will not prorate or allocate the amount owed to the actual production, and Purchaser shall remain obligated to pay such amount to the University whether or not Purchaser has extracted _____ (ENTER NUMBER) cubic yards of Material; the failure of Purchaser to mine at least _____ (__) cubic yards of Material does not excuse Purchaser's obligation to pay the Minimum Payment Obligation on the schedule set forth in this Subparagraph 5.B.

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C. **Material Sales Agreement Maintenance Fee.** In addition to any and all Royalty payments due, in order to maintain this Agreement in effect, Purchaser shall pay to the University a Material Sales Agreement Maintenance Fee of _____ **AND NO/100 DOLLARS ($___.__)** per month. These monthly payments of Material Sales Agreement Maintenance Fees are in addition to any other payments due the University, are not subject to the foregoing minimum Royalty payments or payment recovery provisions, and may not be recovered, adjusted, pro-rated, offset or deducted from any payment for Royalty owed whether such Royalty is owed based upon the minimum due, or a production volume exceeding the minimum due, at any point during the term of this Agreement.

D. **Payments.** Monthly Royalty payments and Material Sales Agreement Maintenance Fee payments shall be due and payable, without demand, on the 5th day of the following month for each and every month that Material is extracted ("Due Date"). For example, a Royalty payment accruing as a result of Purchaser's activity during the month of November would be due on or before December 5th. With each Royalty payment Purchaser shall provide accurate verifying information including a written summary statement of Material extracted and removed, count of daily truck trips, contemporaneous trip tickets including truck driver's name, truck identification, truck volume, number of trips, date of extraction and extraction area, and other such information as the University may reasonably require. In addition, with each such payment or (if then unavailable) promptly thereafter within 30 days of the Due Date of such payment, Purchaser shall provide to the University a copy of its certified pay request stating the volumes of material provided on its contract to the NAME OF PROJECT and/or for any other project for which Material was extracted, which shall be sorted or otherwise designated to identify those materials that originated from the University Property (or other relevant sales invoices and related information for Material sold to other parties).

E. **Interest on Late or Unpaid Royalty.** Any payment not received by the University within **FIVE (5) DAYS** of its Due Date shall bear interest charged at the lesser of _____ (___%) percent per annum, or the maximum legal rate of interest, from the Due Date until the date such payment is made.

6. VOLUME DETERMINATION.

A. **Cross Sectional Surveys.**

(i) **Initial Cross Sectional Survey.** Purchaser shall cause to be performed at its sole cost cross sectional surveys of all areas of Property identified for Material extraction after clearing and grubbing the excavation areas and prior to any extraction of Material.

(ii) **Additional Cross Sectional Survey.** The Purchaser shall cause the same excavation areas to be surveyed again:

(a) ____ __) YEARS after the date of the original survey, if this Agreement remains in effect; and

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(b) within **_____ (__) DAYS** or earlier of **(i)** the final Material extraction from the excavation area to determine the total volume removed from that area or **(ii)** the final date of the Term of this Agreement.

(iii) **Requirements for Cross Sectional Survey.** The cross sectional surveys shall be performed by an independent, qualified and licensed engineer or surveyor and paid for by Purchaser, and shall be certified and delivered to the University by the engineer or surveyor. Final volume measurement for Material under this Agreement shall be determined by the cross sectional surveys of the excavation areas.

(iv) **Additional Payment of Royalty On The Basis of Cross Sectional Survey.** If the cross sectional survey volumes exceed truck volumes reported to the University, Purchaser shall pay Royalty to the University on the additional volume within **_____ (__) DAYS** of the date the survey is required to be completed. IF THE CROSS SECTIONAL SURVEY VOLUMES ARE LESS THAN THE TRUCK VOLUMES PREVIOUSLY REPORTED TO THE UNIVERSITY, NO ROYALTY SHALL BE REFUNDED OR PAID TO PURCHASER BY THE UNIVERSITY.

B. **Initial Volume Measurement by Truck Count and Volume.** The volume measurement for monthly Royalty payments shall be determined by truck count and volume of Material per truck based upon the dimension of the individual truck boxes and heap capacity. Purchaser shall make its best efforts to accurately determine the surveyed-in-place volume capacity of each truck used to haul Material from the Property. Purchaser shall maintain accurate daily records of Material removed from the Property by truck count, and by invoices and other relevant volume records where delivered. These records shall be made by or under the direct supervision of a qualified individual. Accurate daily records shall include, at a minimum, the name of the driver, truck identification, truck volume, date and extraction area, and invoices/pay requests from its contract to NAME OF PROJECT and/or for any other project for which Material was extracted, which shall be sorted or otherwise designated to identify those materials that originated from the University Property (or other relevant sales invoices and related information for Material sold to other parties).

C. **Alternate Methods of Calculating Volumes.** During the Term of this Agreement the Parties may agree in writing to use alternative methods of determining volume if alternative methods can be shown to provide a more accurate representation of Material volume.

D. **Verification of Volumes By University.** The University reserves the right to independently verify Material quantities extracted and removed from the Property. Purchaser shall provide written authorizations necessary for such independent verifications, and shall cooperate with the University and provide records at the University's reasonable request. Additionally, if deemed necessary by the University, the University may at its own cost conduct cross sectional surveys of the excavation areas performed by an independent, qualified and licensed engineer or surveyor to verify volumes and cross sectional surveys provided by Purchaser. Purchaser shall timely pay Royalty determined to have been underpaid.

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7. RECORDS. Throughout the Term of this Agreement and thereafter until all payment obligations are finally satisfied, Purchaser shall keep and maintain detailed records of its operations on the Property and detailed records relating to the amounts and types of Materials extracted from the Property by Purchaser including but not limited to truck counts and cross sectional surveys. These records are subject to verification by field checks and inspection of Purchaser's books by the University or its designee at any time during normal business hours and in the presence of Purchaser's designated representative. Such checks and inspections by the University shall be performed in such a fashion so as not to unduly interfere with Purchaser's authorized uses of the Property. All records maintained by Purchaser shall be kept in accordance with Generally Accepted Accounting Principles.

8. PLAN OF OPERATIONS. Purchaser has submitted to the University a conceptual plan of operations attached hereto as Exhibit X. Prior to Purchaser's commencement of any activities or operations on the Property, Purchaser must submit to the University, for approval, a proposed final plan of operations. Unless otherwise agreed to by the University, Purchaser's proposed final plan of operations must include, at a minimum, the following information:

A. **Plan Summary.** A summary of all proposed activities and operations Purchaser proposes to be conducted on the Property including, but not limited to:

- **(i)** excavation areas and site improvements such as loading ramps, slope face stabilization, and access road improvements;
- **(ii)** the method of removal, disposal or stockpile of topsoil and surface vegetation;
- **(iii)** a detailed description of Purchaser's proposed method of Material extraction, transportation and volume determination; and
- **(iv)** a detailed description of Purchaser's proposed methods and areas of reclamation, including topsoil replacement and seeding prescriptions approved by the University.

B. **Material Quantities & Extraction Schedule.** A summary, in spreadsheet format, showing the amount and types of Materials Purchaser proposes to extract, remove and stockpile on the Property, including but not limited to:

- **(i)** quantities and types of Material to be extracted from each extraction area;
- **(ii)** quantities and types of Material to be stockpiled on the property, including topsoil; and
- **(iii)** a general schedule for each Material extraction and stockpile area.

C. **Detailed Drawings.** Detailed site plans of the Property including plan view(s), profile view(s) and cross-section view(s), to scale, showing existing grade and finished grade including:

- **(i)** areas from which Material is to be extracted and removed, including anticipated side slopes and depths;
- **(ii)** site improvements (e.g. roads, loading ramps, stockpile areas, and sorting areas);
- **(iii)** site rehabilitation and/or reclamation areas; and
- **(iv)** other relevant site and operating information.

Site Plans shall be stamped and certified by an Alaskan Registered Land Surveyor or Engineer.

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D. **Field Staking and Verification Schedule.** A summary showing Purchaser's proposed plan for field staking excavation areas and site improvements (including but not limited to loading ramps, roads, stockpiles, and sorting areas) to be located on the Property.

E. **Equipment Schedule.** A complete list of equipment Purchaser proposes to use on the Property.

F. **Waste Disposal.** A summary of Purchaser's proposed plans for any necessary waste disposal.

G. **Fire Suppression.** A summary of Purchaser's proposed plans for controlling and suppressing brush and other fires.

H. **Copies of All Permits and Authorizations.** Copies of all permits and authorizations required by regulatory agencies having jurisdiction over Purchaser's operations, potentially including but not limited to:

(i) EPA Storm Water Pollution Prevention Plan and Notice of Intent;
(ii) State of Alaska, Mining Permit;
(iii) State of Alaska, DEC Dewatering Permit;
(iv) Corps of Engineers Wetlands Permit; and
(v) Air and Water Quality Permits.

Copies of all permits and authorizations shall be provided to the University prior to the issuance of a "Notice to Proceed".

I. **Other Information.** Any other information either Party determines may be relevant to Purchaser's use of the Property.

The volume of excavation and material produced under the Plan of Operations may not exceed _____ (ENTER NUMBER) cubic yards until the University inspects the Property and notifies Purchaser in writing that it may proceed to excavate for more than _____ (ENTER NUMBER) cubic yards.

Purchaser shall not conduct any activities or commence any operations on the Property (except those minor activities associated with securing permits and authorizations necessary to extract material from the Property), prior to receiving written approval from the University. The University shall, within **_____ (__) DAYS** of receipt of Purchaser's proposed final plan of operations, either **(i)** approve in writing Purchaser's proposed final plan of operations or **(ii)** request additional information or modifications to the plan necessary for the University's approval. The University reserves the right to reject any plan of operations submitted by Purchaser that the University deems insufficient or inconsistent with Purchaser's conceptual plan of operations. Either Party shall have the right to terminate this Agreement in the event the University does not approve Purchaser's proposed final plan of operations. Purchaser shall conduct all of its activities and operations on the Property in strict compliance with the plan of operations approved, in writing, by the University ("Plan of Operations"). The University approved Plan of Operations shall become Exhibit X to this Agreement. Any proposed modifications or amendments to the Plan of Operations must be submitted to the University, in writing, and must be approved in writing by the University ("Plan of Operations Amendment No.

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_____"). All Plan of Operations Amendments shall also become a part of Exhibit X hereto. The University's approval of the Plan of Operations or Plan of Operations Amendments shall in no way be construed as the University approving or disapproving the design, safety features, specifications or any other feature of said plan and is not a warranty that the plan is economic, safe, or meets the requirements of any applicable federal, state, or local laws, regulations or ordinances or any permits or authorizations. The University may require the filing of amendments to the Plan of Operations if warranted to ensure the compliance by Purchaser with the requirements of this Agreement.

9. OPERATING REQUIREMENTS.

A. Adequate Supervision. Purchaser shall maintain adequate supervision of the Property and its operations on the Property at all times during the Term of this Agreement to ensure that its operations are conducted in a safe manner and that the provisions of this Agreement and all applicable federal, state, and local laws, regulations and ordinances governing the operations conducted on the Property are enforced.

B. Unauthorized Use. Purchaser shall secure the Property from unauthorized use resulting from Purchaser's activities or operations at all times during the Term of this Agreement. Purchaser further agrees that hunting, fishing and recreational camping are strictly prohibited on the Property.

C. Sound Engineering Practices. Material extraction shall at all times be carried out adhering to sound engineering and environmental principles and practices. Loosened slope faces shall be scaled back at all times and all highwalls or other hazards shall be remedied immediately to provide safe working conditions. Purchaser shall maintain natural drainage patterns and shall avoid any ponding of water on the Property.

D. Machinery and Equipment. Only operational machinery or equipment directly related to Purchaser's use of the Property for its operations is allowed on the Property. Non-working machinery or equipment shall not be stored on the Property.

E. Property Maintenance. Purchaser shall maintain the Property in a safe, neat and orderly condition and shall take all prudent measures to prevent degradation or destruction of the Property or surrounding area. Purchaser shall be responsible for daily maintenance of the Property, including the responsibility for removing all garbage and debris resulting from Purchaser's use of the Property, until this Agreement terminates.

F. Minimizing Dust. At all times during its operations, Purchaser shall take all reasonable steps to minimize blowing dust by reclaiming and reseeding areas in which extraction is complete and continuously watering disturbed or bare areas and areas open to excavation, and taking other appropriate steps as necessary to avoid blowing dust.

G. Property Conditions. The Parties agree that upon completion of Purchaser's operations the Property shall be left in a condition consistent with the University's designation of the Property as future development property. Therefore:

(i) the Purchaser shall remove and stockpile all topsoil; and

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(ii) prior to initiating excavation activities at any particular site, the boundaries of each excavation site shall be marked by the Purchaser prior to initiation of excavation activities at such site; and

(iii) prior to marking any new excavation site and allowing Purchaser to proceed at such new site, the University may require Purchaser to pay all Royalty due the University for its prior operations and further require Purchaser to complete reclamation on all prior excavation sites and otherwise make such sites comply with the requirements of this Agreement; and

(iv) Purchaser shall take all reasonable steps to minimize blowing dust, such as reclaiming and reseeding areas in which extraction is complete, continuously watering disturbed or bare areas and areas open to excavation, and other appropriate steps as required to avoid blowing dust; and

(v) Purchaser shall not excavate below the elevation of One Hundred Eighty (180.00) feet above sea level in the Mine Area., and

(vi) Purchaser shall leave no pits or depressions or uneven topography and shall smooth the contours of the excavated area prior to replacement of topsoil and reseeding. Purchaser shall also ensure that no ponding, soil washing or erosion occurs and that existing water drainage patterns are maintained; and

(vii) Purchaser shall reestablish all preexisting roads and access routes; and

(viii) upon completion of its operations, Purchaser shall replace stockpiled topsoil on the lands disturbed by its operations, and fertilize and reseed the disturbed areas (using seed mix and amounts per Exhibit X) and ensure the proper reestablishment and growth of plant coverage, as part of its reclamation pursuant to Paragraph 29 hereof; and

(ix) Purchaser shall obtain University approval prior to bringing additional top soil on to the Property, if necessary, for reclamation purposes.

10. DEFAULT, REMEDIES AND TERMINATION.

A. **Termination or Suspension Because of Failure to Pay.** Unless otherwise specified in this Agreement, failure to pay any Royalty or other payment due hereunder on the date due shall be considered a material default and breach of this Agreement. Should Purchaser fail to make any such payment on the date due, and if Purchaser does not remedy its nonpayment within **FIFTEEN (15) DAYS** of receipt of notice of same from the University, the University may in its sole discretion immediately suspend all operations under this Agreement until such payment is made and/or the University may immediately terminate this Agreement.

B. **Termination or Suspension Because of Other Defaults.** The failure of Purchaser to comply with any term or condition of this Agreement other than the payment to the University of money, or the failure of Purchaser to conform its conduct to the standards imposed by this Agreement and all applicable statutes, regulations, ordinances, rules and codes, shall be deemed a default under this Agreement. In the event the University believes Purchaser to be in default of the terms and conditions of this Agreement, unless otherwise provided for herein, the University shall provide Purchaser with **TEN (10) DAYS** written notice of default and the opportunity to cure; provided, however, that Purchaser shall commence promptly, not to exceed within **EIGHT (8) HOURS**, and complete within **FIVE (5) DAYS**, obligations which the University has declared to be of an emergency nature. If, after the **TEN (10) DAY** (**FIVE (5) DAYS** in the case of an

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emergency matter) notice period has expired, the Purchaser has failed to cure the default, the University may, at its sole option, terminate this Agreement.

C. **Effect of Termination.** Termination of this Agreement shall not operate to relieve Purchaser from the payment of any sum due the University, from any claim for damages previously accrued or then accruing against Purchaser, or for reclamation of the Property to the satisfaction of the University as required herein. In addition to termination, the University shall be entitled to any and all remedies provided by law or equity to which the University may resort cumulatively or in the alternative. Failure of the University to strictly enforce at any time any of the provisions of this Agreement or to exercise any option which is herein provided, or to require at any time any of the provisions of this Agreement or to exercise any option which is herein provided, or to require at any time strict performance by Purchaser of any of the provisions hereof, shall in no way be construed to be a waiver thereof, nor in any way affect the validity of this Agreement or any part thereof, or the right of the University thereafter to enforce the same strictly.

11. **ASSIGNMENT, SUCCESSORS IN INTEREST.** The rights and obligations granted and assumed by Purchaser hereunder may not be assigned, delegated, or otherwise transferred except upon prior written approval of the University. Purchaser shall assume any and all reasonable costs incurred by the University in completely evaluating the background, skills, financial position and references of the prospective assignee. The University may assign its interest in the Property with notice to Purchaser. Purchaser shall release the University from any further obligations under this Agreement after the date of the University assignment. This Agreement shall inure to the benefit of and bind the Parties hereto, their respective heirs, administrators, successors and assigns.

12. **INDEMNITY.** Purchaser shall perform all of its obligations and carry on all of its operations and activities of any kind whatsoever pursuant to this Agreement, whether or not conducted on the Property (including on routes of access to the Property) entirely at its own risk and responsibility. Purchaser shall indemnify, defend and hold the University, its Board of Regents, officers, employees, agents and representatives harmless from and against any and all loss, expense, damage, claim, demand, judgment, fee, charge, lien, liability, action, cause of action or proceedings of any kind whatsoever whether arising on account of damage to or loss of property, or personal injury, emotional distress or death arising directly or indirectly in connection with the performance, activities or operations of Purchaser, its employees, agents, representatives, contractors, subcontractors and invitees, whether the same arises before or after completion of Purchaser's operations or expiration of this Agreement. This indemnification does not apply to instances where the injury is caused by the University's sole negligence or intentional misconduct. This indemnification shall survive any termination or expiration of this Agreement. In the event any part of this indemnification clause is determined to be contrary to law or public policy, Purchaser agrees to provide the University with the maximum indemnification allowed by law.

13. **PERFORMANCE AND RECLAMATION BONDS.**

A. Purchaser shall secure a Letter of Credit from a FDIC insured bank or bond in an amount of at least _____ **AND NO/100 DOLLARS ($___.__)** from a qualified broker licensed to do business in the State of Alaska for the benefit of the University

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providing for Purchaser's full performance under the terms of this Agreement. The surety company shall be subject to the approval of the University. The bond shall be maintained in full force and effect until this Agreement is terminated and the University is satisfied that Purchaser has met all its obligations under the terms and conditions of this Agreement. This performance bond is in addition to the reclamation bond, referenced in Subparagraph D. herein, required by the State of Alaska and the University for Purchaser's operations on the Property.

B. Purchaser remains liable for any deficiency for any amounts owed to the University that remains after application of the performance bond.

C. The bond shall not be cancelable without concurrence of the University.

D. Notwithstanding the foregoing, it is a material requirement of this Agreement that the Purchaser secure and maintain a reclamation bond for the Property in accordance with the rules, regulations and requirements of the Alaska Statute 27.19 and 11 Alaska Administrative Code 97. The reclamation bond is in addition to and not in lieu of the performance bond required herein. The University shall be notified and have the opportunity to participate in all State of Alaska performance bond determination, release, replacement, amendment, review, and approval processes related to the Property.

14. GENERAL LIABILITY INSURANCE.

A. **Insurance Requirements for Purchaser and Purchaser's Contractor(s).** Purchaser is required to carry and to ensure that all of Purchaser's contractors carry the insurance itemized below and shall provide certificates evidencing such insurance to the University prior to Purchaser's or Purchaser's contractors' entry on the Property. Purchaser and Purchaser's contractors are required to add the University as an additional insured to all policies, with the exception of workers' compensation. Purchaser and Purchaser's contractors are to waive subrogation against the University on all policies.

(i) Workers' Compensation Insurance. Purchaser and Purchaser's contractors shall provide and maintain, for all of its employees engaged in work under this Agreement, Workers' Compensation Insurance, and Employer's Liability Insurance in accordance with the laws of the State of Alaska. Purchaser and Purchaser's contractors shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection of not less than **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00)** per person, **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00)** per occurrence. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones and Harbor Acts) must also be included.

(ii) Commercial General Liability Insurance. Purchaser and Purchaser's contractors are required to provide Commercial General Liability Insurance with limits of not less than **FIVE MILLION AND NO/100 DOLLARS ($5,000,000.00)** each occurrence and at least **FIVE MILLION AND NO/100 DOLLARS ($5,000,000.00)** aggregate not excluding premises, operations, independent

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contractors, personal/advertising injury, products-completed operations, liability assumed under an insured contract (including defense costs and the tort liability of another assumed in a business contract).

(iii) Business Automobile Coverage. Purchaser and Purchaser's contractors are required to maintain automobile liability insurance with limits of not less than **TWO MILLION AND NO/100 DOLLARS ($2,000,000.00)** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on standard ISO forms from 1990 editions forward, or a substitute form providing equivalent liability coverage. If such coverage is not provided in the base policy, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of standard form CA 00 01.

B. **Insurance Requirements for Subcontractor(s).** Purchaser is required to ensure that all subcontractors carry Workers' Compensation, Commercial General Liability and Business Automobile Insurance and shall provide certificates evidencing such insurance to the University prior to any subcontractor's entry on the Property. All subcontractors are required to add the University as an additional insured to all policies, with the exception of workers' compensation. All subcontractors are to waive subrogation against the University on all policies. At its discretion, the Purchaser or Purchaser's contractor may determine the insurance requirements for subcontractors; however, failure or inability to secure the required minimum pursuant to this agreement, or fully adequate insurance shall in no way relieve Purchaser or Purchaser's contractor of the responsibility for its own acts or the acts of any subcontractors or any employees or agents of either.

C. **Delinquent Premiums.** The University shall have the right, at its option, to pay any delinquent premium upon any of Purchaser's or Purchaser's contractors' or subcontractors' insurance policies if found necessary to prevent a cancellation, non-renewal or material alteration thereof; and Purchaser agrees that it will, within **TEN (10) DAYS**, reimburse the University therefore.

15. HAZARDOUS MATERIAL AND FUEL.

A. As used in this Agreement, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Alaska, or the United States. Hazardous Material also includes petroleum products and petroleum by-products.

B. Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees, may not cause or permit any Hazardous Material, except as noted in subpart C of this Paragraph, to be brought upon, kept, used, or permitted in or about the Property or adjoining property owned by the University. If **i.)** Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees, breach these obligations, or **ii.)** the presence or release of Hazardous Material on the Property, or adjoining property owned by the University, caused or negligently permitted by Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees, results in injury, illness, or contamination of the Property, or **iii.)** contamination of the Property, or adjoining property owned by the University, by Hazardous Material otherwise occurs by the acts of

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Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees, then Purchaser shall indemnify, defend, and hold the University, its Board of Regents, officers, employees, agents and representatives harmless from any and all claims, judgments, damages, penalties, fees, costs, liabilities, or losses (including, without limitation, diminution in value of the Property or adjoining property, damages for the loss or restriction of usable space or of any amenity of the Property or adjoining property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) which arise during or after the period in which this Agreement is in effect as a result of such contamination so long as the acts or omissions occur during the term, extensions, or holdover period of the Agreement. This indemnification of the University by Purchaser includes, without limitation, costs incurred in connection with defense, enforcement, or substantiation of any provisions of this Agreement, any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local government agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Property and adjoining properties. Additionally, if the presence of any Hazardous Material on the Property or adjoining property owned by the University which was caused or negligently permitted by Purchaser results in any contamination of the Property or adjoining property owned by the University, Purchaser shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property or the adjoining property. The University's approval of such remedial actions shall first be obtained, but 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 Property or the adjoining property owned by the University.

C. Purchaser, its employees, agents, representatives, contractors, subcontractors and invitees may bring, keep, and use fuel, oil, grease, and other materials that are necessary for the operation and maintenance of its equipment used in its operations on the Property and for transportation to and from the Property. All fuel storage, fuel transportation, fuel transfer and refueling, and vehicle maintenance (including waste oil collection) shall be conducted in a manner that strictly complies with all applicable laws and regulations and Purchaser's Hazardous Substances Control Plan and any amendments thereto as submitted by Purchaser to and approved by the University, and shall be carried out over an impermeable barrier or in the presence of sorbent materials. Any fuel storage located on the property shall be within a bermed enclosure.

D. The obligations arising under this Paragraph shall survive expiration or earlier termination of this Agreement.

E. Nothing in this Paragraph is intended to relieve Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees from any responsibility imposed by any government agency dealing with Hazardous Materials.

F. The University recommends that Purchaser conduct an environmental evaluation of the Property prior to entry upon the Property. In the event of any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be a rebuttable presumption that any environmental contamination of the Property: **(i)** has been brought upon, kept, used, or released in or about the Property by Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees; **(ii)** has resulted from acts

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or omissions of Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees; and **(iii)** has occurred during the Term of this Agreement. Purchaser has the burden of rebutting these presumptions by clear and convincing evidence.

16. NOTICES. All notices referred to in this Agreement shall be sent to the respective parties at the addresses stated below, or at such other addresses as notified in writing by the other party. The Parties agree that all notices and decisions referred to in this Agreement shall be deemed served on the other party immediately upon hand delivery or **FIVE (5) DAYS** after deposit in the U.S. Mail, whichever occurs first:

UNIVERSITY:
University of Alaska
Facilities and Land Management
1815 Bragaw Street, Suite 101
Anchorage, Alaska 99508-3438
Phone: (907) 786-7766
Fax: (907) 786-7733

PURCHASER:

17. NOTICE OF COMMENCEMENT OF OPERATIONS. Purchaser shall notify the University in writing at least **TWENTY-FOUR (24) HOURS** in advance of commencing operations on the Property. Purchaser shall not allow any contractors or subcontractors to commence operations on the Property prior to providing the University with the certificates of insurance required in Paragraph 14, "GENERAL LIABILITY INSURANCE" herein.

18. REGULATIONS AND PERMITS. Purchaser shall obtain and maintain in force all permits, licenses, and authorizations necessary for the conduct of its authorized use of the Property, and Purchaser shall provide copies of such permits, licenses and other authorizations to the University at least **TWENTY-FOUR (24) HOURS** in advance of commencing operations on the Property. Purchaser shall, at its own expense, comply with all laws, orders, ordinances and regulations of federal, state or local authorities now or hereafter in effect during the Term, and with any lawful direction of any public officer in the conduct of its business on the Property.

19. TAXES AND ASSESSMENTS. Purchaser shall be responsible for the payment of any and all taxes and assessments, including but not limited to resources and property taxes levied upon the Material, improvements, and/or the Property, as a result of Purchaser's activities, and shall cause said taxes and assessments to be paid prior to the delinquency date. The University shall not be responsible for payment of any assessments or special assessments for provision of utilities to the Property for Purchaser's activities.

20. LIENS. Purchaser shall be solely responsible for paying for all labor performed upon or materials furnished to the Property at the request of Purchaser. Purchaser shall keep the Property free and clear of any and all mechanic's, labor or materialmen's liens arising from the performance of labor upon or the furnishing of materials to the Property. To the extent lawfully required, Purchaser shall post and record notices of non-responsibility for the benefit of the University pursuant to Alaska Statute 34.35.065, Alaska Statute 35.35.150 and any other applicable laws.

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21. **UTILITIES.** Purchaser shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the Property for Purchaser's activities. The University shall not be responsible for constructing or maintaining any utilities needed to service the Property for Purchaser's activities and further makes no representation or warranty as to availability of such services.

22. **IMPROVEMENTS.** Purchaser shall be solely responsible for the construction and maintenance of all improvements necessary for the extraction of Material from the Property, including but not limited to: access roads, material stockpiling area, parking areas, and any other improvements approved by the University as part of Purchaser's Plan of Operations described in Paragraph 8, "PLAN OF OPERATIONS". Any additional improvements or other modifications to the Plan of Operations shall require prior written approval of the University. Approval by University only indicates conceptual approval by University and does not constitute any assumption of liability therefore, and does not indicate that the University approves the design, safety features, specifications, code compliance, etc. of the plan or waives any of its rights in relation to such activities or plan, or actions taken by Purchaser in relation to such plan. Purchaser shall be solely responsible for ensuring that all improvements are constructed to code, meet any and all permitting requirements and applicable standards, and are maintained in a safe, neat and well-groomed manner.

23. **ACCESS.** Access to and within the Property shall be the responsibility of Purchaser. The University will not construct or maintain access roads to or within the Property or acquire access easements. Before construction of any road on or across the Property, Purchaser shall obtain from the University written approval of the proposed location and the construction standards of the road. Purchaser shall be responsible for obtaining necessary approvals, permits, including, but not limited to, the U.S. Army Corps of Engineer wetlands permits for road construction to or within the Property.

24. **WILDLIFE RESOURCES.** Purchaser, its employees, agents, representatives, contractors, subcontractors and invitees shall not harass or disturb fish or wildlife resources.

25. **FIRE SUPPRESSION.** While this Agreement is in effect, Purchaser shall independently make every reasonable effort to prevent and suppress forest fires in and around the Property, and shall require its employees, agents, representatives, contractors, subcontractors and invitees to do likewise. Uncontrolled fires shall be reported immediately to the appropriate authorities.

26. **DRAINAGE.** Purchaser's activities shall be conducted so as to minimize disturbance of existing natural drainage systems, changing course or character of water bodies, seeps or marshes, if any, and to minimize disturbance or damage to the Property resulting from Purchaser's activities.

27. **SURVEY.** Discrepancies, conflicts in boundary lines, encroachments, and any facts which a correct survey and inspection of the Property would disclose under this Agreement are not the responsibility of the University. All survey monuments and accessories, such as witness corners, reference monuments and bearing trees, shall be protected from disturbance. Any damaged or destroyed monuments or markers shall be re-established in accordance with original survey methodology per AS 34.65.040, at Purchaser's sole expense.

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28. PROPERTY REPORTS AND DATA. Purchaser shall provide the University with copies of all geological, geophysical and engineering data, maps, logs of drill holes, results of sampling and similar data and any other reports concerning the Property secured by Purchaser.

29. RECLAMATION. At its sole cost and expense, Purchaser shall reclaim and leave the Property at termination in a condition satisfactory to the University and consistent with the terms of this Agreement including but not limited to Paragraph 8 above, and in full compliance with all federal, state and local codes, regulations and statutes including but not limited to, compliance with Alaska Statutes 27.19 and 11 Alaska Administrative Code 97 (including but not limited to 11 AAC 97.250) and other applicable statutes and regulations that may be enacted by an entity with jurisdiction over the operations conducted on the Property during the Term. Purchaser's responsibility to reclaim the Property shall include all areas developed, mined or otherwise disturbed by Purchaser. Purchaser's responsibility to reclaim the Property under the terms of this Agreement shall survive termination of this Agreement. It is the intent of this Agreement that Purchaser shall reclaim all disturbed areas as soon as Purchaser's use of the area is concluded.

30. INCIDENT REPORTS. During the Term of this Agreement and without prior demand by the University, all incidents that take place on the Property resulting in property damage or emergency response, including police, medical and fire shall be reported, in detail, to the University within **TWENTY-FOUR (24) HOURS** of said occurrence.

31. INSPECTION. The University, its agents, representatives or contractors may enter upon the Property at all reasonable times for the purpose of inspection to determine whether Purchaser is complying with its obligations under this Agreement. Purchaser shall facilitate such inspection in every reasonable way; provided however, that University shall enter so as not to unreasonably disrupt Purchaser's occupancy and use of the Property.

32. DISCLAIMER OF WARRANTY. University makes no warranty, either express or implied, nor assumes any liability whatsoever, regarding the physical, social, economic or environmental aspects of the Property, to include, without limitation, the quality, quantity or fitness of the Material on the Property. The University shall not be liable for any damages relating to Purchaser's use of the Material for any purpose. Purchaser understands and agrees that University is making no warranties or representations of any kind concerning the Property or the Material and accepts the Property and associated Material in an "as is" condition, regardless of defects, either patent or latent.

33. TERMINATION. This Agreement shall terminate **(i)** without further notice at the expiration of the Term, **(ii)** upon written mutual agreement between the University and Purchaser, or **(iii)** upon material breach or default as herein provided.

34. CONDITION OF THE PROPERTY AT TERMINATION.

A. <u>Improvements</u>. All improvements on the Property shall be owned by Purchaser until the expiration or earlier termination of this Agreement. Unless otherwise approved in writing by the University, prior to expiration or earlier termination of this Agreement, Purchaser shall, at Purchaser's sole cost and expense, remove all improvements from the Property, removing all debris and leaving the Property in a clean rough-graded, reclaimed and reseeded condition. Any improvements left on the Property at the expiration or earlier

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termination of this Agreement shall be considered abandoned and shall, at the sole option of the University, become the property of the University. The University reserves the right to dismantle, demolish and remove the improvements and restore the Property and charge Purchaser for all costs associated with such removal.

B. **Personal Property and Trade Fixtures.** Prior to expiration or earlier termination of this Agreement, Purchaser shall be responsible for the removal of all personal property and trade fixtures from the Property. All injuries to the Property which result from such removal shall be completely remedied by Purchaser and Purchaser shall comply with the University's reasonable requirements concerning the resultant appearance of the Property. Any personal property and trade fixtures left on the Property at the expiration or earlier termination of this Agreement shall be considered abandoned and shall, at the sole option of the University, become the property of the University. The University reserves the right to dispose of the abandoned personal property and trade fixtures and charge Purchaser for all costs associated with said disposal.

C. **Environmental Assessment and Remediation.** Prior to expiration or earlier termination of this Agreement, Purchaser shall, at Purchaser's sole cost and expense, obtain the services of a qualified, independent third party environmental contractor to complete an environmental assessment of the Property. Purchaser shall promptly remediate, at its sole cost and expense, any environmental contamination identified in the environmental assessment that was not earlier identified in a study undertaken as set forth in Subparagraph 15.F. of this Agreement. No onsite remediation shall be allowed on the Property. In the event of any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be a rebuttable presumption that any environmental contamination of the Property not earlier identified in a study undertaken as set forth in Subparagraph 15.F. of this Agreement: **(i)** has been brought upon, kept, used, or released in or about the Property by Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees; **(ii)** has resulted from acts or omissions of Purchaser, its employees, agents, representatives, contractors, subcontractors or invitees; and **(iii)** has occurred during the Term of this Agreement. Purchaser has the burden of rebutting these presumptions by clear and convincing evidence.

D. **Evidence of Termination.** Upon expiration or earlier termination of this Agreement, Purchaser shall execute and deliver to the University any instrument or instruments as shall be required by the University to properly evidence termination of Purchaser's rights hereunder or its interest in any improvements, free and clear of all claims against them by Purchaser or any third party.

35. ADMINISTRATIVE PROTEST OF UNIVERSITY DECISIONS.

A. **Protest to the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management.** Purchaser may protest any decisions made in relation to this Agreement to the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management, University of Alaska. To protest a decision, Purchaser shall: **(i)** notify the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management, in writing, of the protest, within **THIRTY (30) CALENDAR DAYS** after the University has given notice of the decision; and **(ii)** explain in detail all the reasons for the protest and the form of relief requested. The Chief Strategy, Planning, and Budget Officer of Facilities and Land

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Management shall issue a written determination within **NINETY (90) CALENDAR DAYS** after Purchaser has supplied the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management all the necessary supporting information requested by the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management. This deadline may be extended by the University's Chief Procurement Officer provided the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management establishes good cause for the extension and the Chief Procurement Officer authorizes the extension in writing served on the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management and Purchaser. If the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management does not issue a decision on the protest within **NINETY (90) CALENDAR DAYS** after Purchaser filed the requested information and documents with the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management as requested, and within any extension granted by the Chief Procurement Officer, then Purchaser's protest shall be deemed to have been denied.

B. **Appeal of a Decision of the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management.** Purchaser may appeal the decision of the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management to the Chief Procurement Officer. Purchaser must file written notice of the appeal, a copy of the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management's decision, if applicable, and a list of all legal and factual issues in dispute by no later than **FIFTEEN (15) CALENDAR DAYS** after the date the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management served the decision on Purchaser. Within **FIFTEEN (15) CALENDAR DAYS** of receipt of the appeal, the Chief Procurement Officer shall adopt the decision of the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management as the Chief Procurement Officer's final decision or give notice that a hearing will be held to resolve the dispute. The notice adopting the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management's decision or setting a hearing will be served, in writing, on Purchaser and the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management. If there is a hearing, it will be conducted under Sections 10.14 - 16 of the University's Procurement Code, Board of Regents Policy 05.06.670 and Alaska Statute 36.30.670, as amended or superseded from time to time during this Agreement. The Chief Procurement Officer's final decision must be issued, in writing, and served on Purchaser and the Chief Strategy, Planning, and Budget Officer of Facilities and Land Management within **TWENTY (20) CALENDAR DAYS** after the hearing.

C. **Appeal of a Decision of the Chief Procurement Officer.** An appeal of the Chief Procurement Officer's final decision may be filed with the Superior Court, Third Judicial District, located in Anchorage, Alaska in accordance with the Alaska Rules of Appellate Procedure, by no later than **THIRTY (30) CALENDAR DAYS** after the Chief Procurement Officer serves the final decision on Purchaser.

D. **Notices.** All notices given under this Paragraph 35 shall be given in accordance with Paragraph 16 of this Agreement.

36. GENERAL PROVISIONS.

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A. **Modification.** This Agreement may only be modified by a document in writing, executed by both University and Purchaser. No approval of a Plan of Operations shall constitute an amendment of this Agreement, unless the Plan of Operations approval specifically and expressly states it constitutes an amendment to this Agreement.

B. **Waiver.** The failure of either party to exercise any provision hereunder shall not constitute a waiver of the right to exercise that provision.

C. **Time.** Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.

D. **Authorship.** In the event of ambiguity, this Agreement shall be deemed to have been prepared equally by the Parties and shall be construed accordingly.

E. **Authority.** Both parties represent and warrant that they have the authority to enter into this Agreement.

F. **Relationship.** This Agreement shall in no way be construed so as to create a joint venture, agency, employment or partnership relationship between the University and Purchaser.

G. **Severability.** If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

H. **Paragraph Heading.** The descriptive paragraph headings are for convenience and reference only. The words contained therein shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

I. **Governing Law.** This Agreement shall be interpreted and construed in accordance with, and governed and enforced in all respects by, the laws of the State of Alaska. All legal proceedings arising as a result of this Agreement shall be brought only in the Alaska Superior Court, Third Judicial District, Anchorage, Alaska.

J. **Entire Agreement.** This Agreement and any other documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof. In the event of conflicts between this Agreement and any approved Plan of Operations, the terms of this Agreement shall control, unless the Plan of Operations approval specifically and expressly states it constitutes an amendment to this Agreement. Any changes, additions or deletions must be made in writing and signed by both the Purchaser and the University.

K. **Compliance.** Purchaser agrees that all activities authorized under this Agreement shall be conducted in compliance with all applicable federal, state and local laws, regulations and orders of governmental authorities having jurisdiction over the Property and the activities hereunder (including, but not limited to Federal Environmental Protection Administration Stormwater and Erosion Control Regulations, U.S. Army Corps of Engineers, Alaska District, Wetland Regulations and Permitting, Alaska Department of Environmental Conservation Regulations, and Alaska Worker's Compensation Laws) now, or hereafter, in effect during the Term of this Agreement.

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L. **Survival.** The obligations of Purchaser under this Agreement arising or accruing before the expiration or termination of this Agreement shall survive such expiration or termination. Notwithstanding any other provision contained herein, until all of the Purchaser's obligations pursuant to this Agreement are fully satisfied, all of Purchaser's obligations pursuant to Paragraph 12, "INDEMNITY," Paragraph 13, "PERFORMANCE AND RECLAMATION BONDS," Paragraph 14, "GENERAL LIABILITY INSURANCE," Paragraph 18, "REGULATIONS AND PERMITS," Paragraph 19, "TAXES AND ASSESSMENTS," and Paragraph 29 RECLAMATION of this Agreement shall continue.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the day and year of the last signed below.

UNIVERSITY:

_____ _____

By: [Name], Date
Its: [Title]
UNIVERSITY OF ALASKA SYSTEM

PURCHASER:

_____ _____

OFFEROR Date

Exhibits: Exhibit X –
Exhibit X –
Exhibit X –

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ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
_____ JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, _____ before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and sworn as such personally appeared to me **[Name]**, the [Title] of Facilities and Land Management, University of Alaska, a corporation created under the Constitution and laws of the State of Alaska, and who acknowledged to me that she executed the within and foregoing document on behalf of said corporation by authority of its Board of Regents, as the voluntary act and deed of said corporation, for the uses and purposes stated therein.

WITNESS my hand and official seal the day and year herein and above written.

_____
Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
_____ JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, _____ before me, the undersigned Notary Public, in and for the State of Alaska, duly commissioned and sworn as such personally appeared to me **OFFEROR**, and who acknowledged to me that he/she/they executed the within and foregoing document on behalf of said corporation, as the voluntary act and deed of said corporation, for the uses and purposes stated therein.

WITNESS my hand and official seal the day and year herein and above written.

_____
Notary Public in and for Alaska
My Commission Expires: _____

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