

AGREEMENT
FOR LEASE OF MUNICIPAL PROPERTY FOR
OPERATION OF OVERBURDEN DISPOSAL SITE & MISCELLANEOUS ACTIVITIES

City and Borough of Sitka ("CBS") agrees to lease municipal property to Marble Island LLC, 7180 Revilla Road, Ste 200, Ketchikan, AK 99901 ("Lessee") in this Agreement For Lease of Municipal Property for the Operation of Overburden Disposal Site and Miscellaneous Activities as approved by CBS ("Agreement"), subject to the following terms and conditions:

SECTION I. DESCRIPTION

A. MATERIAL/LEASE SITE ("Site"):

The Site as shown on the attached Boundary Survey of the Granite Creek Industrial Area consists of Tract 5.

The Site contains 6.7 acres more or less.

B. TERMS:

1. The term of this Agreement begins on February 5, 2021, and ends on February 5, 2026 unless sooner terminated or extended as provided in this Agreement.
2. Waste Area Management Plan – The Lessee shall obtain approval from CBS of an acceptable Waste Area Management Plan. The final plan shall be stamped by a licensed Civil Engineer and/or registered Land Surveyor licensed to practice in the State of Alaska.

Lessee shall adhere to the approved Waste Area Management Plan and the conditions in this Agreement throughout all operations on and related to the Site.

Subjects to be addressed in the Waste Area Management Plan include the following:

- a. Development Plan Drawings
 - i. Plans shall be produced using AutoCAD software or equivalent.
 - ii. Plan sheets shall be published as pdf and be printable on 11x17 sized paper.
 - iii. Sheets shall have consistent title blocks identifying, at a minimum, the Site information, date, scale, sheet name and numbering, Engineer/Surveyor seal and Lessee information.

- iv. Plan set shall include a title sheet, legend, vicinity map, notes, details and plan sheets as needed to thoroughly and neatly describe the existing conditions and the proposed development of the Site.
 - v. Each plan sheet shall be sealed by a licensed Civil Engineer(s) or Land Surveyor(s), as appropriate.
 - vi. Scale 1" = 50', 5' contour intervals.
 - vii. Survey control information.
 - viii. Site boundaries and property lines.
 - ix. Existing utilities and improvements.
 - x. Existing contours.
 - xi. Final finished contours and elevations with site at full capacity.
 - xii. Phasing with access routes and control.
 - xiii. Drainage plan showing methods to control drainage during and upon achieving waste site capacity.
 - xiv. Erosion and sediment control plan.
 - xv. Measures to assure stability and protect private property, including containment structures.
 - xvi. AutoCAD files shall be made available to CBS upon completion of initial Development Plan and annually for the life of the Lease Agreement and subsequent renewals.
- b. Geotechnical information obtained.
 - c. Permitting requirements.
 - d. Placement and cover requirements.
 - e. Methods for quantification of overburden material disposed of at the Site and native material removed and relocated for use in operation of the Site.
 - f. Plan to sustainably remove and utilize native material for maintenance of the Site, including methods and locations of material removal, planned use of native material and quantification of material removed. Disturbance of native materials shall be minimized.
 - g. Inspection and compliance documentation process.

- h. Disposal techniques for special materials, i.e., peat, dredge spoils or other difficult to dispose of materials.
- i. Reclamation and Continuation Plan applicable to termination of Lease or closure of the Site. Lessee shall be responsible for the adherence to this plan. Operations shall be performed in a manner designed to leave the Site in a condition conducive to additional waste disposal after termination of this Agreement. Lessee shall demonstrate compliance to the reclamation and continuation plan on a yearly basis. Substantial non-compliance shall be grounds for termination or cancellation of the Agreement.
- j. Erosion Control and Protection of Waters – Road construction or operations in connection with this Agreement shall be conducted so as to avoid damage to streams, lakes or other water areas and lands adjacent to the Site. Vegetation and materials shall NOT be deposited into any stream or other waste area. Locations and/or improvements such as road crossings over streams shall be approved, in advance, by CBS.

All roads or other areas to be abandoned or an area to cease being an active portion of Lessee's operation shall be treated with such measures to prevent erosion and shall be reclaimed in accordance with the required reclamation plan. Lessee shall repair any damages resulting from any failure to perform to these requirements to the satisfaction of CBS. This includes, but is not limited to, waters defined in Alaska Administrative Code at Title 5 – Fish and Game.

All operations shall be performed in accordance with an approved Storm Water Pollution Prevention Plan (SWPPP) and adhere to the Granite Creek Total Maximum Daily Load (TMDL). This plan shall be prepared by Lessee and approved by CBS and the Alaska State Department of Environmental Conservation before work begins in the Site. The Lessee also has the option to take responsibility of the existing CBS maintained SWPPP, for all activities on the Site subject to approval by the CBS Municipal Engineer. The SWPPP may require the installation and maintenance of siltation control structures at Lessee's expense.

Should CBS determine that the operations cause silting or pollution of Granite Creek to a degree unacceptable to the Alaska Department of Environmental Conservation and/or the U.S. Fish and Wildlife Service after all reasonable attempts have been made to have Lessee correct the problems, this Agreement shall be void upon notification to Lessee by CBS. Lessee shall hold CBS harmless from any litigation whatsoever which may result from this action.

Siltation of Granite Creek and associated tributaries is to be minimized. Therefore, no earthmoving will be allowed during heavy rains, and Lessee will,

at its own expense, provide all proper drainage and routine settlement ponds for permanent uses.

Construction equipment, aggregate stockpiles, etc shall not be stored within 25 feet of Granite Creek. Lessee will make every effort to preserve the 25-foot stream buffer.

- k. Fire Protection – Lessee shall take all necessary precautions for the prevention of wild fires and shall be responsible for the suppression and bear the suppression costs of any and all destructive or uncontrolled fires occurring within or without the Site, resulting from any and all operations involved under the provisions of this Agreement. Lessee shall comply with all laws, regulations and rules promulgated by the agency responsible for fire protection in the area.
- l. Roads – Before constructing any haul road, secondary or spur roads across CBS property, Lessee shall obtain written approval of the location and construction standards of such roads from CBS.

Access over any route not under CBS control is the sole responsibility of Lessee. Lessee agrees that any permanent route, access or right of way obtained over privately owned property shall include a permanent easement to CBS.

- m. Site Supervision – Lessee shall maintain adequate supervision at all times when operations are in progress to ensure that the terms and conditions of this Agreement and all applicable Federal, State and local laws, rules and regulations governing such operations are enforced. At all times, when operations are in progress, Lessee or a person authorized by Lessee to assume the responsibilities imposed by this Agreement, shall be present on the Site.

Approved Waste Area Management Plan shall be attached and appended to this Agreement.

- 3. Boundary Lines and Survey Monuments – Upon execution of this Agreement, Lessee shall have the Site surveyed and control monuments placed by a registered land surveyor to fully identify the boundaries. No boundary mark of the Site or any survey lines or witness tree to any survey corner or monument, shall be severed or removed, nor shall any survey corner or monument be damaged or destroyed. Any violation of this subsection will require Lessee to pay for reestablishing the lines, corners, or monuments by a registered land surveyor.

Lessee shall also have the Site as it exists when this Agreement is executed, cross sectioned within thirty (30) days of the beginning date of this Agreement and prior to receiving or removing of any material. The purpose of this initial cross section is to establish the beginning configuration of the Site and base line to be used for subsequent annual cross sections.

4. It is not the intent of CBS to allow indeterminate holding of the Site without development. Lessee shall meet the requirements of the Waste Area Management Plan and the Boundary Lines and Survey Monuments, as described in Section I.B.2 and Section I.B.3, respectively, to ensure the Site is developed in a timely manner. Site disturbing activities and acceptance of overburden for disposal shall not commence until all Plans and Permits are in place and CBS provides written Notice to Proceed.
5. Lessee will develop, operate and manage a land clearing landfill within the Site per the Waste Area Management Plan, see Section I.B.2. Sound engineering practices and procedures shall be adhered to at all times during operations. The Site will accept overburden, stripping, brush, stumps, and other debris from private development work and CBS Projects. Primary purpose of the Site is overburden disposal; secondary purpose is topsoil production. Other alternative uses on the Site shall be allowed per Sections I.B.13-14.
 - a. Rates for waste material disposal will be charged as follows:
 - i. Through February 5, 2026, the base unit rate shall be \$4.80 per cubic yard;
 - ii. Rate adjustment requests may be made after five years at time of lease renewal and/or subsequent renewals. Rate adjustment requests must be accompanied by sufficient economic justification and are subject to approval by CBS; and
 - iii. There will be no free dumping unless approved or directed by CBS.
 - b. The rate will include \$0.50 per cubic yard royalty that will be collected by the Lessee and reimbursed to the CBS on a quarterly basis. Quarters within this Agreement are defined as calendar quarters with quarters ending the last calendar day of March, June, September, and December.
 - c. Lessee shall be responsible for all elements associated with operating, managing, and maintaining the waste area including but not limited to the following:
 - i. Daily oversight of the acceptance and disposal of overburden, stripping, brush, and other organic materials;
 - ii. Collecting fees for disposal at the Site and collection of CBS sales tax on all transactions at the Site and remit the tax along with CBS payment;
 - iii. Controlling access to the Site. Except for those portions of the operation which are associated with low noise levels such as maintenance of equipment, Lessees operations shall be confined to the hours of 7:00

A.M. to 7:00 P.M. daily. Site shall be open to the public, at a minimum, 8:00 A.M. to 4:00 P.M., Monday through Saturday. CBS reserves the right to restrict operations on weekends and holidays, with liability to Lessee for violating this restriction;

- iv. Providing material for berm construction as well as any required cover material;
- v. Utilize stumps and logs to reinforce the down slope face of the landfill. Log and stump berms shall be constructed in advance of waste disposal to contain saturated materials.
- vi. Sustainably remove and utilize native material for maintenance of the Site, while minimizing disturbance of native material, in accordance with the Waste Area Management Plan;
- vii. Maintain records of imported material and reimbursing CBS \$0.50 per cubic yard for material imported, regardless of its source, and native material removed and relocated onsite, as applicable, based on the approved Waste Area Management Plan. Payment shall be made on a quarterly basis to CBS and copies of all records shall be included with payment;
- viii. Slope failures due to mishandling of materials or improper slope construction shall be repaired by the Lessee at no cost to CBS;
- ix. Controlling run-on water and surface ponding to minimize infiltration into the landfill mass to minimize leachate generation;
- x. Maintain access roads, ditches, and drainage within the Site, including drainage around the toe of the waste area, to preclude turbid or otherwise contaminated water (with particular emphasis on iron oxide) from exiting the Site and entering Granite Creek. This work may include construction and maintenance of sedimentation ponds, silt fences, aeration ponds, filtering, fabric liners on the inside face of berms, or other measures as required to address leachate and as included in an updated and approved Storm Water Pollution Prevention Plan (SWPPP);
- xi. Maintain existing stream side vegetated buffers along Granite Creek;
- xii. Obtaining and maintaining all necessary permits, including applications, payment, inspection, and reporting;
- xiii. Complying with conditional use permits for waste area operations; and
- xiv. Coordinating with large users of the Site. Large users are defined as users from a single project that will generate overburden waste in excess of

5,000 cubic yards. Each large user must file a Wasting Plan outlining estimated waste volumes, source of waste, and duration of waste disposal operations with Lessee. Lessee is responsible to obtain acceptance of this plan by CBS before large users begin hauling to the Site. Lessee may negotiate with large users for assistance in managing large user waste volumes.

6. The intent is for this Site to be developed as a service to the public, and no one will be turned away from the Site without concurrence by CBS.
7. Storage of bulk petroleum fuel or oil is prohibited.
8. Lessee shall copy CBS on all permit or regulatory correspondence, including reporting, with respect to the Site. The CBS point of contact shall be:

Public Works Director
907-747-1804
publicworks@cityofsitka.org

9. Dumping at the Site will only be allowed in areas designated by Lessee and agreed by CBS. The stability of previously dumped material will influence the location of the active dumping fronts.
10. Lessee shall grade all waste surfaces to drain. Ponding of water on the landfill surface will not be acceptable. Lessee shall grade completed sections of the landfill in a manner acceptable to CBS.
11. Lessee shall utilize operating methods directed toward containment of saturated soils, reduction of soil moisture content through drainage, and long-term consolidations with associated gains in soil strength and stability.
12. The Lessee may utilize up to one acre of the Site to produce and stockpile topsoil. If topsoil production and stockpiling is not included and approved in the Waste Area Management Plan outlined in Section I.B.2, it shall be requested in writing by the Lessee for review and approval by CBS prior to beginning production and sale of topsoil. Request shall include proposed rate of sale per cubic yard. Lessee agrees to pay royalty fees of 10% per cubic yard rate agreed to and shall maintain records of all material leaving the Site for inclusion in quarterly reporting. Any agreement for production and sale of topsoil shall be incorporated via amendment signed by Lessee and CBS and shall be fully permitted prior to execution.
13. The Lessee is encouraged to use the Site for miscellaneous purposes beyond what is outlined within this Lease. Alternative uses (e.g. sale of firewood, staging or storage of equipment, material processing) not included in the Waste Area Management Agreement for Lease of Municipal Property for Operation of Overburden Disposal Site

& Miscellaneous Activities

Plan outlined in Section I.B.2 shall be requested in writing by the Lessee and requires written approval by CBS prior to implementation. Any agreement for alternative uses shall be incorporated via amendment signed by Lessee and CBS and shall be fully permitted prior to execution.

14. The Lessee may sublease portion(s) of the site upon written request and approval by CBS. Prior to the approval of any such assignment, CBS shall be provided with all the terms of the proposed assignment or production agreement. This shall include time of assignment and potential use. If such terms are deemed inflationary or of such a type to be considered an abandonment of further interest in the Site by the original party, the assignment may be denied. Any agreement for subleasing shall be incorporated via amendment signed by Lessee and CBS and shall be fully permitted prior to execution. Lessee shall pay CBS 10% of any fee paid to the Lessee by sublessee.
15. The Site's primary purpose is disposal of overburden. If secondary uses as outlined in Sections I.B.12-14, and approved and incorporated by amendment, inhibit the operation of the primary purpose, agreement for operation of all or some of the secondary uses may be terminated by CBS.
16. The Lessee is prohibited from removing native material, including mining and export of rock, from the Site without written approval by CBS as part of the Waste Area Management Plan or subsequent agreement. Mining rock may be permitted by CBS to facilitate modification or advancement of overburden disposal site only. If mining is required, a Mining Plan shall be developed. Any subsequent agreements and required plans shall be incorporated into the Waste Area Management Plan via amendment signed by Lessee and CBS and shall be fully permitted prior to execution.
17. Provided there does not then exist a continuing material default by Lessee under this Agreement at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to request the option for successive terms of five (5) years upon the same terms and conditions as this Lease (except Section I.B.1), with the Lease payments during the extension terms as described in Section II. With written mutual agreement, the Lease may be extended for a maximum of two (2) successive terms of five (5) years for a total lease duration of 15 years. This option is effective only if (a) Lessee makes a written request to exercise such an option not more than one year or less than six months from the end of the immediately preceding term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease. Successive terms are dependent on approval by CBS and at CBS' discretion and may be denied without cause. Any successive terms shall be incorporated via amendment signed by

Lessee and CBS. The Lessee may request an adjustment in the disposal fee, if applicable, at time of renewal per Section I.B.5.a.ii.

18. Site Closure Requirements:

- a. At the expiration of this Agreement, Lessee shall notify the Director of Public Works so an inspection of the Site can be scheduled. This inspection shall include general clean-up, compliance with the reclamation plan, removal of all Lessee's equipment and any other item felt a responsible element of any final inspection;
- b. All responsibilities and liabilities of Lessee shall remain in effect until this Agreement terminates, and all of its conditions are met, including cleanup of Site;
- c. Lessee agrees to submit an itemized transaction summary and payment for material disposed of within forty-five (45) days of the expiration date or completion, whichever occurs earlier; and
- d. If Lessee is forced to end, restrict or curtail its operations due to State or Federal law or regulations or for any other cause over which CBS has no control, CBS shall have no liability, whatsoever.

SECTION II. PAYMENTS

- A. Lessee shall be required to submit a performance bond upon executing this Agreement in the amount of \$20,000.00, issued by a Surety properly licensed to do business in Alaska. On the yearly anniversary date of this Agreement, and after the pit cross sections are accomplished and Lessee is inspected for adherence to a continuation plan, CBS shall release in writing the prior year's bond, and accept a new bond for the next year of operation, as set out in Section III.A.

The purpose of the bond shall be to correct non-conforming conditions created by Lessee. An example might be to do necessary continuation work left undone or otherwise correct site problems, such as drainage control. The bond may also be used to pay for unpaid royalties or other costs owed to CBS, such as anniversary surveys.

- B. Lessee agrees to pay CBS on a quarterly basis for all operations on the Site, including all material disposed, wasted, or stored on the site, topsoil sold or removed from the Site, sub lessee(s), sales taxes, etc, according to the following formula:

(Quarterly imported volume in CY X \$0.50)
 + (Quarterly native material relocated/wasted volume in CY X \$0.50, if applicable)
 + (Quarterly exported volume of topsoil in CY X 10% of sale price)
 + (10% of any fee paid to the Lessee by sub lessee(s))
+ (Quarterly Sales Tax on all transactions at the Site)
 = CBS Payment

- C. Lessee shall provide a quarterly report to CBS summarizing all activities including permit compliance or violations, site usage logs, fill summary, native material removal and relocation summary, topsoil transactions, sub lessees, penalties identified, and payment summary.
- D. Cross sections of the Site shall be surveyed annually at the end of the quarter in which the Agreement executed, by a professional land surveyor registered to practice in the State of Alaska, as defined in Section III. Surveyed volume will be compared to royalty yardage paid as a method of accounting control.
- E. If it becomes apparent that the Lessee is consistently under-reporting the material wasted by more than 15% and or falsifying the records to under-report the material wasted, Lessee shall be fined. A fine of double royalty payments of the under-reported amount will be assessed and the Agreement may be terminated by CBS.
- F. Lessee shall be fined for any native material removed from the site without written agreement of CBS at a rate of \$100.00 per CY.
- G. CBS and Lessee recognize that time is of the essence of the Lease and CBS will suffer financial loss if operation of the Site is not maintained including but not limited to failure to comply with environmental or permitting requirements, failure to maintain in good standing quarterly CBS reports and failure to perform corrective actions associated with issues of non-compliance as identified by regulatory agencies or CBS within 30 days of Lessee notification. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by CBS if the Site is not maintained. Accordingly, instead of requiring any such proof, CBS and Lessee agree that as Liquidated Damages for an unmaintained Site (but not as a penalty) Lessee shall pay CBS \$2,000/month payable to CBS on a quarterly basis.
- H. Quarterly payment shall be submitted to CBS no later than the forty-five (45) days following the last day of the quarter.
- I. Final annual royalty payments shall be based on records required in Section III, and shall be submitted to CBS no later than the forty-five (45) days following the last day of the

quarter. Failure to timely submit the payment result in a penalty of double the royalties due of the month.

Final payment at the end of the term or at the termination of the Agreement shall be based on records required in Section III, and shall be submitted to CBS no later than forty-five (45) days following the term end or Agreement termination. Failure to submit the payment within the time allotted shall result in a penalty of double the royalties due.

SECTION III. RECORDS

- A. Annually on the Agreement anniversary date, at the beginning and end of the term (including termination) of this Agreement, Lessee shall have the Site fully cross sectioned by a registered engineer/surveyor, properly licensed to practice in the State of Alaska. Cross sections shall be provided to CBS in pdf format and be printable on 11x17 sized paper. Cross section data shall be reduced to a clean graphical and tabular presentation with necessary annotations to allow for efficient review. Cross section data shall clearly delineate each subsequent survey, beginning with the pre development survey. Cross sections shall be accompanied by a report which summarized cross section data and reconciles surveyed volumes to monthly royalty payments previously submitted. Additionally, AutoCAD files shall be made available to CBS upon completion of initial Development Plan and annually for the life of the Lease Agreement and subsequent renewals.
- B. All final annual royalty payments will be adjusted based on survey cross section quantities. Any shortfalls in royalties identified through such surveys must be remitted at time of annual reporting.
- C. End of term or at termination of Agreement royalty payments will be adjusted based on survey cross section quantities. Any shortfalls in royalties identified through such surveys must be remitted at time of reporting.

SECTION IV. OPERATING REQUIREMENTS

Lessee shall operate the Site under the conditions contained herein and in accordance with the terms of Conditional Use Permit 05-15, approved February 28, 2006, and amended 04/21/2021.

SECTION V. LIABILITY AND INDEMNIFICATION

Lessee shall defend, hold harmless, and indemnify CBS and its officials, employees, and authorized representatives or its successors from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the

exercise of the Lessee's privileges granted and duties required by this Agreement, or arising out of any incident whatsoever which may occur on the Site or commonly used facility. This includes but is not limited to damage to power lines, poles and facilities, telephone lines and poles, survey monuments, roads, bridges and culverts, pollution and/or damage to water systems, or personal injury.

SECTION VI. INSURANCE

- A. Lessee shall carry Workers' Compensation insurance, in accordance with the rules and regulations of the State of Alaska. This policy shall also include coverage of Employers' Liability limits of no less than \$500,000, or the minimum required by State law, whichever is greater. A sole proprietor without employees is not required to carry this insurance; however, they must provide documentation supporting the exception.
- B. Lessee shall carry Commercial General Liability insurance with occurrence limits of \$1,000,000 and aggregate limits of \$2,000,000. This policy shall in no way limit or exclude significant exclusions of coverage shall be shown on the certificate of insurance.
- C. Lessee shall carry Business Automobile insurance with limits of \$1,000,000. This shall cover all owned, non-owned and hired automobiles that are used in the operations related to this Agreement.
- D. Lessee shall carry Excess or Umbrella Liability insurance with limits of no less than \$5,000,000. This insurance shall be in excess to the Commercial General Liability, Business Automobile and Employers' Liability. This insurance requirement is based on current activity. If the activity changes to include blasting, work adjacent to a public Right of Way or other higher risk activities the insurance limits may be adjusted upward by CBS to address the higher risk activity.

Lessee shall provide a Certificate of Insurance that evidences the above. This Certificate shall also allow for a 30 day notice of cancellation or material change of coverage.

- E. CBS shall be named as an additional named insured on the required Commercial General Liability and Business Automobile insurance policies. CBS shall also be granted a full waiver of any rights of subrogation by endorsement under all required policies. These requirements extend to all subcontractors and sublessees.

SECTION VII. IMPROVEMENTS AND OCCUPANCY

- A. Any improvements to transportation facilities including crushers, mixing plants, buildings, bridges, roads, or any other constructed by Lessee in connection with this Agreement and within the Site area shall be in accordance with plans approved by CBS. Improvement and facility safety (both design & operation) shall be the responsibility of

Lessee, and not the responsibility of CBS. Lessee agrees to follow all applicable safety and building codes, regulations, and permits.

- B. The Lessee shall, within sixty (60) days after the expiration of termination date of this Agreement, remove all equipment and other personal property from the Site, and comply with Section I.B.18.

SECTION VIII. INSPECTION

- A. Authorized agents of CBS shall have access at all times to the Site.
- B. At all times when operations are in progress, Lessee shall have a representative readily available at the site of operations who shall be authorized to receive on behalf of Lessee, any notices and instructions given by authorized CBS personnel in regard to the performance under this Agreement, and to take such action as is required by the terms of this Agreement.

SECTION IX. TERMINATION AND SUSPENSION

- A. This Agreement may be terminated by CBS if Lessee breaches the Agreement and fails to correct this breach within thirty (30) days after written notice is served upon Lessee.
- B. Failure of Lessee to take immediate action to correct unwarranted damage to natural resources may be corrected by CBS to prevent additional damage. Any cost incurred by CBS shall be paid by Lessee.
- C. This Agreement may be terminated by mutual agreement of both parties on terms and conditions agreed upon, in writing by both parties.
- D. Lessee shall provide records per Section III if Lease is terminated.

SECTION X. RESERVATIONS

- A. CBS makes no representations as to the suitability of the property as a material source for any particular use. Lessee shall determine the suitability of the material for any application.
- B. CBS reserves the right to enter into other agreements regarding other sites in the Granite Creek Quarry Area to other parties during the term of this Agreement.
- C. CBS reserves the right to permit other compatible users, including waste disposal and the sale of materials, on the lands near the Site provided CBS determines that such uses will not unduly impair Lessee's operations under this Agreement.

SECTION XI. PERMITS

- A. Lessee shall assume responsibility of the existing Storm Water Pollution Prevention Plan (SWPPP), currently managed by CBS, or shall prepare and submit a new SWPPP. The plan shall be approved by CBS and the ADEC before work begins on the Site. For lease extensions the current SWPPP will be reviewed to determine if modifications are required.
- B. All operations shall be in accordance with the City and Borough of Sitka Conditional Use Permit, as it now exists or as modified in the future.
- C. Lessee shall obtain and pay for any other permits required as needed to construct and operate at the Site.

SECTION XII. EXPIRATION AND EXTENSION

This Agreement shall expire on February 5, 2026 unless mutually agreed on per Section I.B.17.

SECTION XIII. WARRANTIES

THIS AGREEMENT IS MADE WITHOUT ANY WARRANTIES BY CBS, EXPRESS OR IMPLIED, AS TO THE QUANTITY, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, CONCERNING THE MATERIAL TO BE STORED OR EXTRACTED UNDER AGREEMENT.

SECTION XIV. WAIVER

No agent, representative or employee of CBS has authority to waive any provision of this Agreement unless expressly authorized to do so, in writing, by the Municipal Administrator.

SECTION XV. JURISDICTION: CHOICE OF LAW

This Lease shall be governed by the laws of the State of Alaska, and any lawsuit brought thereon shall be filed and prosecuted only in Sitka, Alaska in the courts of State of Alaska.

SECTION XVI. NONDISCRIMINATION

The Lessee may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The Lessee shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provision of this paragraph.

Lessee shall state, in all solicitations or advertisements for employees to work on jobs relating to this Lease, that all qualified applicants will receive consideration for employment without regard to race,

religion, color, national origin, age disability, sex, marital status, changes in marital status, pregnancy, or parenthood.

The Lessee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Lease. The Lessee shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Lessee to carry out these requirements is a material breach of this Lease which may result in the termination of this Lease or other legally available remedies.

SECTION XVII. FORCE MAJEURE

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Lease, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Lease, including without limitation:
 - i. Any interruption, suspension, or interference resulting solely from the act of Sitka or neglect of Sitka not otherwise governed by the terms of this Lease.
 - ii. Strikes or work stoppages.
 - iii. Any interruption, suspension, or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, pandemics, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - iv. Order of court, administrative agencies or governmental officers other than Sitka.

SECTION XVIII. ATTACHMENTS

Attached to the end of this lease are the following documents for reference:

- Lease Area 5 Boundary Survey
- Waste Area Management Plan (to be attached upon approval)
- Amended Conditional Use Permit #05-15

In the event there is any difference between an attachment to the original of this Lease on file with CBS Clerk and any attachment to a duplicate original of the Lease, the attachments to the original filed with CBS shall control.

SECTION XIX. AMENDMENTS

Attached as amendments are approved.

IN WITNESS, the parties execute this lease through their duly authorized representatives, and represent by the signing of this Lease by their duly authorized representatives that they are authorized to sign this Lease between Owner and Lessee for Municipal Property and Operation of Overburden Disposal Site & Miscellaneous Activities on behalf of the Party they represent.

CITY AND BOROUGH OF SITKA, ALASKA

Date

By: John Leach
Its: Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, ALASKA, an Alaska home rule municipality, on behalf of the municipality.

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

MARBLE ISLAND, LLC

Date

By: Trevor Sande

Its: Managing Member

STATE OF ALASKA)

) ss.

FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Trevor Sande, Managing Member for the MARBLE ISLAND, LLC, an Alaska corporation, on behalf of the corporation.

Notary Public in and for the State of Alaska

My Commission Expires: _____