**CITY OF CORDOVA, ALASKA**
**RESOLUTION 11-11-41**

**A RESOLUTION OF THE CITY OF CORDOVA, ALASKA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT EXTENDING A GROUND LEASE TO THE DEPARTMENT OF FISH AND GAME**

**WHEREAS**, the Alaska Department of Fish and Game ("ADFG') has rented property from the City for many years through a ground lease; and

**WHEREAS**, the ground lease expires in June of 2013 but the ADFG wants to add improvements to the property immediately if the City of Cordova, Alaska ensures that the ADFG's lease of the property will be extended; and

**WHEREAS**, it is in the City's best interest to support the ADFG's use of the property and its lease of the property; and

**WHEREAS**, the City administration proposes amending the lease and permitting an extension of that lease so long as the terms of the original ground lease remain in force and the rent rate is increased at the time the original ground lease would have expired;

**NOW, THEREFORE BE IT RESOLVED THAT** the City Council of the City of Cordova, Alaska, hereby authorizes the City Manager to enter into an amendment to the ground lease between the parties with substantially the same content as the lease amendment attached to this resolution as Exhibit A. The City Manager is hereby awarded the authority to revise, amend or modify the language to Exhibit A as necessary to protect and promote the City's interests in executing the lease amendment attached hereto as Exhibit A.

**PASSED AND APPROVED THIS 16th DAY OF NOVEMBER, 2011.**

CITY OF CORDOVA CORPORATE SEAL JULY 8, 1909 ALASKA

David Reggiani, Vice-Mayor

Attest:

Susan Bourgeois, City Clerk

Exhibit A

# AGREEMENT AND AMENDMENT OF GROUND LEASE

This AGREEMENT AND AMENDMENT OF GROUND LEASE between the City of Cordova, Alaska ("City" or "Cordova") and State of Alaska Department of Fish and Game ("ADFG") is made this _____ day of November, 2011, by and between the City and ADFG (collectively referred to as the "Parties"). This Agreement and Amendment of Ground Lease is hereinafter referred to as the or this "Amendment."

## RECITALS

WHEREAS, the City entered into a Ground Lease with ADFG with a commencement date of July 1, 2003 and an expiration date of July 1, 2013;

WHEREAS, under the terms of the Ground Lease. ADFG leased certain real property and facilities from the City ("the Property"); and

WHEREAS, ADFG has requested that the Ground Lease be extended prior to its expiration date since ADFG is considering investing additional funds in upgrading some of the buildings located on the Property and does not want to invest such funds without ensuring that the terms of the Ground Lease, as amended by this Amendment, will continue for the next five (5) years,

NOW, THEREFORE, the Parties agree as follows:

**1.** **Term.** The term of the lease shall be extended and the Ground Lease shall expire on June 30, 2018, which is five (5) years after the original expiration date of June 30, 2013. The new expiration date of June 30, 2018 shall hereafter be called the "Expiration Date."

**2.** **Rent.** Rent shall continue at the rate of $_____ until the original expiration date of June 30, 2013. Beginning June 30, 2013, rent shall be increased to Eleven Thousand Five Hundred Fourteen Dollars and Twenty-Five cents ($11,514.25) per year and shall be paid on annual basis on June 30th of each year starting June 30th 2013. Rental rates shall be subject to market based increases as provided in the Ground Lease.

**3.** **Ground Lease.** All provisions, terms and conditions of the Ground Lease, except as specifically amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed in their respective names as of the date first above written.

| STATE OF ALASKA<br>DEPARTMENT OF FISH AND GAME | CITY OF CORDOVA, ALASKA |
|---|---|
| By:_____ | By:_____ |
| Its:_____ | Its:_____ |

**ALASKA DEPARTMENT OF FISH AND GAME**
*DIVISION OF ADMINISTRATIVE SERVICES*
*Procurement Section*

***SEAN PARNELL, GOVERNOR***

*P.O. BOX 115526*
*JUNEAU, AK 99811-5526*
*PHONE: (907) 465-4133*
*FAX: (907) 465-6181*

September 21, 2011

Mark Lynch, City Manager
City of Cordova
P.O. Box 1210
Cordova, Alaska 99574

RE: Ground Lease extension

Mr. Lynch:

The Alaska Department of Fish and Game currently leases a parcel of land, Lot 5A, Block 3, Odiak Park Subdivision, from the City of Cordova on a Ground Lease (copy enclosed). On that parcel, the state has a 5,000 square foot warehouse that is shared between the Department of Fish and Game and the Department of Public Safety. In addition, we have a couple of smaller storage buildings and two container vans, as well as yard storage.

The ground lease will expire on 6/30/2013. The department is considering investing additional funds in upgrading some of the buildings but would like to request an extension of five years or more to the ground lease before doing so.

Would the City be willing to extend the ground lease at least five years at this time?

Please let me know as soon as possible so we can proceed with the planning process.

Sincerely,

*Bill Jackson*

Bill Jackson
Lands & Leasing Coordinator
E-mail: william.jackson2@alaska.gov

**CITY OF CORDOVA**
**Cordova, Alaska**

# GROUND LEASE

**THIS LEASE** ("Lease") by and between the **CITY OF CORDOVA**, a municipal corporation organized and existing under the laws of the State of Alaska (the "City"), and **STATE OF ALASKA DEPARTMENT OF FISH AND GAME** doing business in Cordova, Alaska ("Lessee").

## RECITALS

WHEREAS, the City owns that certain unimproved parcel of land in Cordova, Alaska generally described as Lot 5A, Block 3, Odiak Park Subdivision (referred to hereinafter as the "Premises"); and

WHEREAS, Lessee desires to lease the Premises from the City, and Lessor desires to lease the Premises to Lessee, on the terms and conditions set forth herein; and

WHEREAS, the Cordova City Council ("Council") has approved the lease of the Premises from the City to Lessee in accordance with the Cordova City Charter §5-17 and Chapter 5.22 of the Cordova Municipal Code (hereinafter referred to as the "Code" or "CMC").

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, it is agreed as follows:

## 1. LEASE OF PREMISES

Subject to the terms and conditions set forth herein, the City hereby leases to Lessee, and Lessee hereby leases from the City, the Premises.

## 2. LEASE TERM

The term of this Lease shall be ten (10) year, commencing on **July 1, 2003** (the "Commencement Date") and expiring ten (10) years later, on **June 30, 2013**, unless earlier terminated in accordance with the terms of this Lease.

## 3. RENT

**A. Base Rent.** The rent during the term of this Lease shall be Seven Thousand Six Hundred and Ten Dollars ($7,610) or ($634.17) in twelve monthly installments (the "Base Rent"), which shall be due and payable in advance on the Commencement Date of this agreement. Base Rent shall be paid to the City in lawful money of the United States without abatement, deduction or set-off for any reason whatsoever, at the address provided for notice to the City set forth in Section 20.E of this Lease, or at any other place that the City may from time to time direct in writing. Base Rent shall be paid promptly when due without notice or demand therefor. The parties intend the Base Rent to be absolutely net to the City. All costs, expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises shall be the obligation of, and shall be paid by, Lessee. As required by the CMC Section 5.22.040(C), any lease having a term of more than two (2) years shall be subject to a rental adjustment to fair market value at intervals of no more than two (2) years, but no adjustment shall result in a reduction of rent.

**B. Additional Charges.** In addition to the Base Rent, Lessee acknowledges and agrees that Lessee is obligated to pay and shall pay, before delinquency and without reimbursement, all costs, expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises or the activities conducted on the Premises, including without limitation those costs, expenses and obligations identified in Section 7 and all other sums, costs, expenses and other payments that Lessee assumes or agrees to pay under the provisions of this Lease (the "Additional Charges").

cause a cancellation of any insurance policy covering the Premises. Lessee shall not leave the Premises unoccupied or vacant without the City's prior written consent. Lessee shall not cause or permit any Hazardous Material (as defined in Section 9.B of this Lease) to be brought upon, kept, or used in, on or about the Premises except for such Hazardous Material as is necessary to conduct Lessee's authorized uses of the Premises. Any such Hazardous Material brought upon, kept, or used in, on or about the Premises shall be used, kept, stored, and disposed of in a manner that complies with all environmental laws and regulations applicable to Hazardous Material. Lessee shall not cause or allow the release or discharge of any other materials or substances that are known to pose a hazard to the environment or human health.

**D. Lessee's Acceptance of Premises.** Lessee has inspected the Premises to its complete satisfaction and is familiar with its condition, and the City makes no representations or warranties with respect thereto, including but not limited to the condition of the Premises or its suitability or fitness for any use Lessee may make of the Premises. Lessee accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. No action or inaction by the Council, the City Manager, or any other officer, agent or employee of the City relating to or in furtherance of the lease of the Premises shall be deemed to constitute an express or implied representation or warranty that the Premises, or any part thereof, is suitable or usable or any specific purpose whatsoever. Any such action or inaction shall be deemed to be and constitute performance of a discretionary policy and planning function only, and shall be immune and give no right of action as provided in Alaska Statute §9.65.070, or any amendment thereto.

## 5. REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants to the City that Lessee is not delinquent in the payment of any obligation to the City, and Lessee has not previously breached or defaulted in the performance of a material contractual or legal obligation to the City, which breach or default has not been remedied or cured.

## 6. ASSIGNMENTS AND SUBLETTING; SUBORDINATION

Lessee shall not assign or otherwise transfer this Lease or any interest herein or sublet the Premises or any portion thereof, or permit the occupancy of any part of the Premises by any other person or entity, without the prior written consent of the City, which consent the City may withhold in its absolute discretion. The City shall not be required to subordinate this Lease or the City's interest in the Premises to the interest of any other person or entity.

## 7. OPERATIONS, MAINTENANCE, UTILITIES, TAXES AND ASSESSMENTS

Lessee shall, at Lessee's sole cost and expense, be solely responsible for: (1) the maintenance and repair of the Premises and shall not commit or allow any waste upon the Premises; (2) obtaining any and all permits and approvals necessary for Lessee's use of the Premises; (3) all utilities and services needed for Lessee's use of the Premises; (4) all assessments levied against the Premises, and Lessee agrees to pay all such assessments as and when they become due, including but not limited to all utility bills and special assessments levied and unpaid as of the date of this Lease or hereafter levied for public improvements; (5) all licenses and excise fees with respect to the business and activities conducted on the Premises.

## 8. LIENS

Lessee will suffer no lien or other encumbrance to attach to the Premises, including without limitation mechanic's or materialman's liens, sales tax liens under CMC §5.40.125, or property tax liens under CMC §5.36.260. If the City posts any notice of non-responsibility on the Premises, Lessee will ensure that the notice is maintained in a conspicuous place.

substance" under any such law or regulation.

## 10. INSURANCE

Lessee shall procure and maintain, at Lessee's sole cost and expense, the following policies of insurance with a reputable insurance company or companies satisfactory to the City:

(1) Commercial general liability insurance in respect of the Premises and the conduct of Lessee's business and operations, naming the City as an additional insured, with minimum limits of liability of Ten Million dollars ($10,000,000.00) per accident or occurrence for bodily injury and death, and property damage for each occurrence;

(2) Property insurance, insuring against loss or damage by fire and such other risks as are customarily included in the broad form of extended coverage, in an amount of coverage not less than the replacement value of the improvements on the Premises, if any, and on such terms as are satisfactory to the City;

(3) Personal property insurance covering Lessee's trade fixtures, furnishings, equipment, and other items of personal property of Lessee located on the Premises; and

(4) Workers compensation insurance, and such other insurance as is required by law.

All insurance required under this Lease shall contain an endorsement requiring thirty (30) days' advance written notice to the City before cancellation or change in the coverage, scope, or amount of any policy. Prior to commencement of the Lease term, Lessee shall provide the City with proof of the insurance required by this Section 10.

## 11. REMOVAL OF PROPERTY

Upon expiration or earlier termination of this Lease, at the option of the City, Lessee shall remove from the Premises, at Lessee's sole expense, all property Lessee has placed or caused to be placed on the Premises. Lessee shall repair any damage to the Premises caused by such removal and return the Premises as near as possible to its original condition as existed on the Commencement Date. All property which is not promptly removed by Lessee pursuant to the City's request and in any event within thirty (30) days of the date of expiration or termination of this Lease may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense, and Lessee hereby agrees to pay the City for such expenses. Notwithstanding any provision to the contrary in this Lease, all petroleum, fuel, or chemical storage tanks installed in or on the Premises during the term of this Lease shall remain the property of the Lessee and, upon expiration or earlier termination of the Lease and upon request of the City, Lessee shall remove any and all such tanks and any and all contaminated soil and other materials from the Premises, all at Lessee's sole expense.

## 12. DEFAULT AND REMEDIES

**A. Default.** The occurrence of any of the following shall constitute a default and a breach of this Lease by the Lessee:

(i) The failure to make payment when due of any installment of rent, Additional Charges or of any other sum herein specified to be paid by the Lessee;

(ii) The failure to pay any taxes or assessments due from the Lessee to the City and in any way related to this Lease, the Premises, any improvements, or the Lessee's activities or business conducted thereon, including but not limited to any real property, personal property or sales taxes;

(iii) An assignment for the benefit of Lessee's creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt, or for extending the time for payment, adjustment, or satisfaction of Lessee's liabilities, or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated or otherwise permanently stated or terminated within thirty (30) days after the assignment, filing or other initial event;

## 13. SUBSIDENCE

The City shall not be responsible for any washout, subsidence, avulsion, settling or reliction to the Premises, nor for any injury caused thereby to the property of the Lessee or any sub-lessee, or that of any other person. The City is not obligated to replace, refill, or improve any part of the Premises during Lessee's occupancy in the event of such washout, subsidence, avulsion, settling, or reliction.

## 14. VACATION BY LESSEE

Upon the expiration or sooner termination of this Lease, Lessee shall peaceably vacate the Premises and the Premises shall be returned to the City by Lessee together with any alterations, additions or improvements made after the Commencement Date, unless the City requests that they be removed from the Premises. Upon such vacation, Lessee shall remove from the Premises any items of personal property brought on to the Premises. Any such property not removed from the Premises within thirty (30) days of the expiration or termination of this Lease shall become the property of the City at no cost or charge to the City, and may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Lessee's sole expense, and Lessee hereby agrees to pay the City for such expenses.

## 15. RESERVATION OF RIGHTS

The City reserves the right to designate and grant rights-of-way and utility easements across the Premises without compensation to Lessee or any other party, including the right of ingress and egress to and from the Premises for the construction, operation and maintenance of utilities and access, provided that Lessee shall be compensated for the taking or destruction of any improvements on the Premises. Lessee shall be responsible for requesting a rental adjustment to reflect any reduction in the value of the Premises.

## 16. SIGNS

No signs or other advertising symbols, canopies, or awnings shall be attached to or painted on or within the Premises without approval of the City Manager first being obtained; provided, however, that this prohibition shall not apply to standard, directional, informational and identification signs of two square feet or less in size. At the termination of this Lease, or sooner, all such signs, advertising matter, symbols, canopies or awnings, attached or painted by Lessee shall be removed from the Premises by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises, and correct any unsightly conditions caused by the maintenance or removal of said signs.

## 17. HOLDING OVER

If Lessee with the City's written consent remains in possession of the Premises after the expiration or termination of the Lease term for any cause, or after the date in any notice given by the City to Lessee terminating this Lease, such holding over shall be deemed a tenancy from month to month at the same rental amount applicable immediately prior to such expiration or termination, subject to adjustment in accordance with CMC § 5.22.040(c) or such successor provision of the code then in effect, and shall be terminable on 30 days' written notice given at any time by either party. All other provisions of this Lease except those pertaining to term and rent shall apply to the month-to-month tenancy. If Lessee holds over without the City's express written consent, Lessee is deemed to be a tenant at sufferance and may be removed through a forcible entry and detainer proceeding without service on Lessee of a notice to quit.

## 18. EMINENT DOMAIN

If the whole or any part of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then the following provisions shall be operative.

continue in full force and effect with respect to any other existing or subsequent breach.

**H. Survival.** No expiration or termination of this Lease shall expire or terminate any liability or obligation to perform which arose prior to the termination or expiration.

**I. Late Payment.** In the event that any rent or other payment due under this Lease is not received by the City when due, a late fee of five percent (5%) per month of the principal amount due shall be due and payable until the full amount of rent or other payment is received by the City.

**J. Partial Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**K. Successors and Assigns.** The terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the City and Lessee.

**L. Estoppel Certificates.** Either party shall at any time and from time to time, upon not less than 10 days' prior written request by the other party, execute, acknowledge, and deliver to such party a statement certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment, that the same is in full force and effect as amended and stating the amendments); that there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

**M. Recordation of Lease.** The parties agree that this Lease shall not be recorded, but upon the request of either party, the other party will join the requesting party in executing a memorandum of lease in a form suitable for recording, and each party agrees that such memorandum shall be prepared and recorded at the requesting party's expense.

**N. Authority.** Lessee represents that Lessee has all necessary power and is duly authorized to enter into this Lease and to carry out the obligations of Lessee hereunder as set forth above. Lessee further represents that Lessee has the necessary power to authorize and direct the officer of Lessee whose name and signature appear at the end of this Lease to execute this Lease on Lessee's behalf.

**O. Exhibits.** Exhibit A to this Lease is hereby specifically incorporated into this Lease.

**P. No Third Party Beneficiaries.** Nothing in this Lease shall be interpreted or construed to create any rights or benefits to any parties not signatories or successors or permitted assigns of signatories to this Lease.

**Q. Interpretation.** The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against the City or Lessee as both City and Lessee have had the assistance of attorneys in drafting and reviewing this Lease.

**R. Counterparts.** This Lease may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**S. Attorney's Fees.** In the event that the City shall bring any suit or action to enforce this Lease or any term or provision hereof, and shall prevail in such suit or action, Lessee agrees that Lessee shall pay the City's attorney's fees, costs and expenses incurred in connection with such suit or action.