

State of Alaska
Department of Natural Resources
Division of Agriculture
Agricultural Revolving Loan Fund
Board of Agriculture and Conservation
1800 Glenn Highway, Suite 12
Palmer, Alaska 99645-6736

COMMERCIAL LEASE WITH AN OPTION TO PURCHASE

This agreement is entered into this ____ day of _____, 2016, between the Board of Agriculture and Conservation (BAC), Division of Agriculture, State of Alaska (Lessor) and _____ (Lessee) whose address is _____.

1. The Lessor and Lessee agree to the Lease of the Premises and equipment described below. This lease is subject to existing reservations, restrictions and easements.

A. Real Property. The real property known as Mt. McKinley Meat and Sausage Company (MMM&S) located in the Matanuska-Susitna Borough, more specifically described as:

Lot H-2C-2, Palmer Industrial Park according to Plat 84-2, Palmer Recording District, Third Judicial District, Alaska

B. Equipment. An inventory of the equipment included in this lease is set out in Attachment A to this Lease.

2. Authorized Uses. The Lease is issued for the purpose of slaughtering, purchasing, processing, and marketing of domestic livestock and products produced. The Lessee's use of the Premises is strictly limited to these authorized uses, as well as those activities related to and required to support and operate the facility. Use of the Premises for any other purpose without the prior written approval of the Lessor is prohibited. The facility currently operates under a conditional use permit from the City of Palmer, and that permit is reviewed annually. Lessee assumes responsibility for obtaining the proper permits for the continued operation of the facility. The Lessee must maintain U. S. D. A. inspection for slaughtering and processing domestic livestock during the term of this Lease. Failure to maintain U.S.D.A. inspection for slaughtering and processing domestic livestock during the term of this lease is a material breach of the lease.

3. Lease Term. This Lease is effective upon execution by both parties. The term of this Lease is for **five (5) years** beginning on _____, 2016 and ending on _____, 2021. The Lessee must vacate the Premises on the date that the Lease expires unless terminated sooner.

4. Rent and Deposit. The monthly rent for the Premises shall be **one dollar (\$1.00)**, due on the first day of each month and the same date each year for the **first twenty-four months** of

the lease. Thereafter, rent shall increase to **\$1,600 per month** for the remainder of the lease. A security deposit of **\$5,000** is due upon execution of this Lease. The security deposit will be returned to the Lessee at the expiration or termination of this Lease after application to all rental payments due, necessary repairs, damages, or expenses associated with the Lease, or applied to the purchase price if Lessee exercises the option to purchase.

The Lessee must make checks, bank drafts, or postal money orders for rents, charges, fees or other considerations payable to the ARLF and deliver or mail to DNR, Financial Services, 550 West 7th Avenue, Suite 1410, Anchorage, AK 99501-3554. In the event that a Lease payment is made later than 30 days after the date described above for payment, the Lessee agrees to pay a late charge of 7% of the payment that is overdue. A late charge will be assessed for each late payment for as long as the default continues.

5. Hold Over. If the Lessee holds over and remains in possession of the Premises after the expiration of this Lease, the Lessor may, at its option, bring an action for recovery of possession of the Premises by serving the Tenant with a seven (7) day notice to quit. If the Lessor accepts rent from Lessee after expiration of the Lease, the acceptance of rent shall only create a month-to-month tenancy. The Lessee's obligations for performance under this Lease will continue during the month-to-month holdover tenancy. Either party may terminate the month-to-month holdover tenancy at any time by giving the other party at least 30 days prior written notice.

6. Purchase Option. The Lessee may purchase the Premises for its fair market value based on an appraisal conducted by an approved Department of Natural Resources (DNR) appraiser. The appraised value, as well as the other factors set forth in 11 AAC 39.710, shall be considered by the BAC prior to determining the fair market value of the property. To exercise this purchase option, the Lessee must give Lessor written notice **by certified mail** of its intent to exercise the purchase option anytime during the term of this lease, but at least 60 days prior to expiration of the Lease. The written notice must be postmarked at least 60 days prior to expiration of this lease or Lessor shall have the right to reject Lessee's exercise of the purchase option. The Lessee must pay for the appraisal, and the cost of the appraisal will be credited toward the purchase price at closing. The value at time of closing of capital improvements, made and paid for by the Lessee that were pre-approved in writing by the Lessor, will be deducted from the purchase price. The parties shall make reasonable efforts to close the sale within 180 days of notice of exercise of the option to purchase. Lessee shall make lease payments as specified (\$1.00/month for the first 24 months and \$1,600/month thereafter) until the sale has closed.

It is the intention of the BAC that the Lessee or Buyer provides U.S.D.A. inspection services for the full 5 year term of this lease. In the event the option is exercised, and closing will occur prior to expiration of the lease, Lessee/Buyer will be required to execute a purchase agreement secured by a first deed of trust with an agreement to continue operation of MMM&S with U.S.D.A. inspection for the remaining full 5 year term of this lease.

Lessee may apply for purchase financing through ARLF but ARLF does not represent that it will finance the purchase of the property.

If the Lessee does not exercise this option to purchase the Premises the Lessee must vacate the Premises on the date that the Lease expires.

7. Non-transferable. This Lease and option to purchase is nontransferable.

8. Termination. If the Lessee violates or fails to perform any term of this Lease, the Lessor may terminate this Lease and recover possession of the Premises by giving the Lessee 30 days written notice unless the breach is cured within the 30 day period. The Lessee must vacate the Premises at the end of 30 days if the breach has not been cured to the satisfaction of the Lessor.

If the violation creates an emergency situation, the Lessor may terminate the Lease immediately and the Lessee must vacate the Premises immediately. The notice of termination must state the nature of the emergency and the reasons that the Lease is being terminated without 30 days advance notice to the Lessee.

In the event that the Lease is terminated or the Premises is abandoned by the Lessee during the term of the Lease, the Lessor may immediately take possession of the Premises, and all animals, personal property and improvements therein without liability for damage. If the Lessor takes possession of the Premises, the Lessee is not relieved for any monetary liability under the Lease.

9. Utilities. Lessee shall provide for all utilities, maintenance services (including snow, garbage and offal removal) at the Premises and other expenses associated with the day-to-day operation and maintenance of the plant.

10. Maintenance and Repairs. Lessor shall be responsible for ordinary repairs and maintenance to the building structure, boilers, and other heating components. Lessee shall maintain the premises, including the leased equipment, in good and safe working condition. If Lessee fails to keep and maintain the premises and equipment in good and safe working condition, Lessor may, at its option, put or cause the same to be repaired or replaced, and upon receipt of written statements from Lessor, Lessee shall promptly pay the entire cost thereof. Lessor shall have the right to enter the leased premises for the purpose of making such repairs or replacements upon the failure of Lessee to do so.

11. Insurance and Indemnification.

a. Insurance

1. The Lessee shall secure and keep in force during the term of this Lease adequate insurance to protect both the Lessor and Lessee against comprehensive public liability and property damage. Where specific limits are stipulated, it is understood that they shall be the minimum acceptable limits. If the Lessee's

policy as provided contains higher limits, the Lessor shall be entitled to coverage to the extent of the higher limits. Subject to review of the Lessee's operations' plan, the following policy of insurance is required with the following minimum amounts:

Comprehensive General Liability, including Premises, all operations, and personal injury and death, broad-form contractual, with a per-occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. This policy shall name the Lessor as an additional insured.

Property Damage at the replacement value of \$1,200,000. The policy shall name the Lessor as an additional insured.

2. The Lessee shall provide the Lessor with proof of insurance coverage in the form of an insurance policy or a certificate of insurance, together with proof that the premiums have been paid, and shall show the types and monetary limits of coverage secured. All insurance required by this provision must provide that the Lessor be notified at least 30 days prior to any termination, cancellation, or material change in the insurance coverage.

3. At no cost to the Lessor, the Lessee agrees that if the Lessee's insurance coverage for the Premises or the Lessee's operations lapses or is canceled, the Lessor has the right to halt the Lessee's operations immediately upon written notice. The Lessee's operations will remain halted until the Lessor receives evidence that the Lessee has obtained current insurance coverage meeting the requirements of this Lease. The Lessor's halting of the Lessee's operations is not a waiver or relinquishment of the Lessor's right of termination.

4. The Lessee agrees that the terms of the insurance requirements may be revised on written notice by the Lessor and will be based on existing and new capital improvements, new construction or the risks relative to the Lessee's operations.

b. Indemnification

The Lessee shall indemnify, defend, and hold the Lessor, its agents, and employees harmless from and against any and all liability, loss, suit, claim, judgment, fine, demand, damage, penalty, property damage, or personal injury of whatever kind, including sums paid in settlements of claims, attorney fees, consultant fees, expert fees, or costs incurred arising from or connected with this Lease, the Lessee's use or occupation of the Premises, the Lessee's operations or any act or omission by the Lessee, its agents, contractors, employees, customers, or sublessees. The Lessee shall give to the Lessor reasonable notice of any such claims or actions. The Lessee shall also use counsel reasonably acceptable to the Lessor in carrying out its obligations.

12. Destruction of Premises. If the leased premises should be partially or totally destroyed by fire, or other casualty, or if premises should be so damaged as to substantially interfere with the business of Lessee, the Lessee shall have the option to terminate this lease whereupon this lease shall terminate and rent shall be abated for the unexpired portion of this lease, effective as of the date of said destruction.

13. Eminent Domain.

a. Total Taking. If all of the leased premises are taken by eminent domain, this lease shall terminate as of the date Lessee is required to vacate the leased premises and all rentals shall be paid to that date. The term "eminent domain" shall include the taking or damage of property by, through or under any governmental authority, and any purchase or acquisition in lieu under any governmental authority, and any purchase or acquisition in lieu thereof, whether or not the damaging or taking is by the governmental or any other person.

b. Partial Taking. If a taking of any part of the leased premises by eminent domain renders the remainder thereof unsuitable for the business of Lessee, this lease may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after Lessor received notice of the taking, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the leased premises so taken. If this lease is so terminated, all rent shall be paid to the date of termination. Whenever any portion of the leased premises is taken by eminent domain and this lease is not terminated, Lessor shall at its expense proceed with all reasonable dispatch to restore, to the extent that it is reasonably prudent to do so, the remainder of the leased premises to the condition it was in immediately prior to such taking, and Lessee shall at its expense proceed with all reasonable dispatch to restore its fixtures, furniture, furnishings, floor covering and equipment to the same condition they were in immediately prior to such taking. The minimum rent payable hereunder shall be reduced from the date Lessee is required to partially vacate the leased premises in the same proportion that the area taken bears to the total area of the leased premises prior to taking.

c. Damages. Lessor reserves all right to the entire damage award or payment for any taking by eminent domain or a transfer in lieu thereof and Lessee waives all claim whatsoever against Landlord for damages for termination of its leasehold interest in the premises or for interference with its business. Lessee hereby grants and assigns to Lessor any right Lessee may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as Lessor may from time to time request. Lessee shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss incurred by Lessee in removing Lessee's merchandise, furniture, trade fixtures and equipment or for damage to Lessee's merchandise, furniture, trade fixtures and equipment or for damage to Lessee's business.

14. Laws and Taxes.

a. This Lease is issued subject to all requirements of the laws and regulations of the State of Alaska relating to the leasing of lands and facilities in effect during the term of this Lease.

b. The Lessee shall conduct all activities or business authorized by this Lease in compliance with all federal, state and local laws, ordinances, rules and regulations in force that apply to the activities or business authorized in this Lease, including matters of U.S.D.A. inspection, health, safety, sanitation and pollution.

c. The Lessee shall obtain all necessary licenses and permits, pay all taxes and special assessments lawfully imposed upon the Premises and pay other fees and charges accessed under applicable public statutes or ordinances. Nothing shall prevent the Lessee from challenging any taxes or special assessment to the appropriate authority under applicable procedures.

d. In any dispute between the parties, the laws of the State of Alaska will govern. If a dispute continues after exhaustion of administrative remedies, any lawsuit must be brought in the courts of the State of Alaska, Third Judicial District at Palmer, Alaska.

e. The Lessee shall promptly notify the Lessor of any claim, demand, or lawsuit arising out of the Lessee's occupation or use of the Premises. Upon the Lessor's request, the Lessee will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit affecting the Premises.

f. The Lessee shall promptly give the Lessor notice of proceedings to abate or settle matters relating to the presence or release of hazardous substance or infectious waste on the Premises or from the Lessee's operation. The Lessee shall allow the Lessor to participate in such proceedings or discussions.

15. Assignment or Sublease. The Lessee shall not assign, sublet, or give a security interest, either by grant or implication, in the whole or any part of this Lease, the Premises, equipment, inventory, or any improvement on the Premises.

16. Liens. The Lessee shall keep the Premises and improvements placed on the Premises free of all encumbrances, including liens arising from work performed for the Lessee or any obligations incurred by Lessee, pay all costs for labor and materials arising out of any construction or improvements by the Lessee on the Premises, and hold the Lessor harmless from liability for any liens, including costs and attorney fees.

17. Improvements. The Lessee shall obtain written approval from the Lessor prior to making any capital improvements. Lessee will be financially responsible for any capital improvements. All improvements to the property, including permanently installed fixtures become the property of ARLF.

18. Right to Inspect. The Lessor shall have the right to inspect the Premises during reasonable hours. If approved by the Lessor, the Lessee shall allow prospective lessees or purchasers to inspect the Premises during reasonable hours.

19. Waiver or Forbearance. The receipt of rent by the Lessor, with or without knowledge of any breach of the Lease by the Lessee, or of any default on the part of the Lessee in the observance or performance of any of the terms, conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of the Lessor to enforce a condition or covenant of this Lease, nor the waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate the application of such term or covenant; nor shall any forbearance or written waiver affect the right of the Lessor to enforce any term or covenant in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money or the termination in any manner of the Lease, or the giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend this Lease nor destroy or in any manner impair the validity of any such notice of termination that may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless the contrary effect shall be expressed in writing and signed by the Lessor.

20. Surrender of Premises. Upon the termination or expiration of this Lease, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the Premises.

Unless otherwise agreed to in writing:

a. Upon termination or expiration of the Lease all leasehold improvements shall remain the absolute property of the Lessor, with the exception of those improvements that the Lessor has specifically in writing authorized Lessee to remove upon termination or expiration of the Lease.

b. The Lessee shall remove all improvements Lessor has authorized Lessee to remove.

c. The Lessee shall leave the Premises in a safe and clean condition acceptable to Lessor.

d. The Lessee shall leave all equipment and improvements in a good working condition acceptable to Lessor.

21. Notices. All notice required or permitted under this Lease shall be made by certified mail, postage prepaid, to the parties at the following address:

To the Lessor: Director, Division of Agriculture
Alaska Division of Agriculture
1800 Glenn Highway, Ste. 12
Palmer, Alaska 99645-6736

To the Lessee:

Name: _____

Address: _____

City, State, Zip: _____

Any notice or demand that must be given or made by the Lessor or the Lessee shall be in writing and shall be complete if sent by United States certified mail to the address shown in the Lease, or to such other address that the parties may designate in writing from time to time.

22. Operating Plan for Slaughtering, Processing and Marketing Livestock. The Lessee's Operating Plan for Slaughtering, Processing and Marketing Livestock (Plan) is made part of this Lease and is Attachment B. The Lessee's failure to perform its operations in accordance with the Plan is a breach of this Lease and will be grounds for termination unless otherwise agreed to in writing by Lessor.

23. Benefit of Agreement. This Agreement is for the benefit of the State of Alaska and Lessee and is not for the benefit of any person, agency, or entity who is not a party to this Lease.

24. Modification. This lease sets forth the entire agreement and understanding of Lessor and Lessee concerning the leased premises, and there are no other agreements or understandings, oral or written, between Lessor and Lessee concerning the leased premises. Any subsequent modification or amendment of this lease shall be binding upon Lessor and Lessee only if reduced to writing and signed by them.

25. Validity of Parts. If any provision or covenant of this Lease is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

26. No Warranty. The Lessor makes no specific warranties, express or implied, concerning the condition of the Premises or equipment, suitability for any use, or the environmental condition.

27. Costs and Fees Incurred to Enforce Lease. The Lessee shall pay all reasonable actual expenses, costs, and attorney fees Lessor may incur, with or without formal action, to enforce, defend or protect this Lease or Lessor's rights under this Lease.

28. Slaughter Obligation. Lessee agrees to slaughter all domestic livestock grown or raised in the State of Alaska and delivered to the Premises, subject to the formulas, fees and operation schedules contained in the Operating Plan for Slaughtering, Processing and Marketing Livestock and all other provisions of this Lease. Cattle, sheep, swine, goats, bison, reindeer and elk are domestic livestock under the terms of this agreement. Nothing in this agreement shall require the Lessee to accept sick or unmarketable animals.

29. Domestic Livestock Purchase Obligation. Lessee agrees to purchase domestic livestock according to the payment formulas, fees and operation schedules contained in the Operating Plan for Slaughtering, Processing and Marketing Livestock.

30. Purchase and Pricing of Other Livestock. Lessee may slaughter and process consumer or producer owned animals for home use or resale consistent with U.S.D.A. and D.E.C. requirements.

Lessee: _____

Dated: _____

By its: _____

Lessor: _____

Dated: _____

By its: _____