

(Coal Lease)
(Revised 3/97)
DNR #10-1126 3/97

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Coal Lease

Lease ADL No: 553737

This lease is entered into between the State of Alaska (referred to in this lease as the State) through the Department of Natural Resources, and

(referred to in this lease as the lessee , whether one or more), whose address is:

In consideration of the cash payment made by the lessee to the State, which payment includes the first year's rental and any required cash bonus, and subject to the provisions of this lease, including any exhibits and addendums attached to this lease, and by reference incorporated in this lease, the State and the lessee agree as follows:

1. GRANT. (a) Authorized activities. The State grants to the lessee
(1) the exclusive right to mine and dispose of all the coal in or upon the following tract of land:

Seward Meridian

T19N, R13W – Section 6

T19N, R14W – Section 1

T20N, R13W – Sections 6, 7, 18, 19, 30, and 31

T20N, R14W – Sections 1, 12, 13, 24, 25, and 36

T21N, R13W – Sections 19, 20, 29, 30, 31, and 32

T21N, R14W – Section 24, all excluding the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

containing approximately 13,160 acres, more or less, referred to as the leased area;

(2) the exclusive right to explore for coal in the leased area;

(3) the right, subject to reasonable concurrent uses as determined by the State, to use the surface for the purposes of exploration and mining of coal.

2. TERM. This lease is issued for an indeterminate period in accord with AS 38.05.150.

3. RESPONSIBILITIES OF LESSEE. In consideration of the foregoing, the lessee hereby agrees as follows:

(a) Bond. The lessee shall furnish and maintain a coal lease bond as required by regulation.

(b) Rental.

(1) The lessee shall pay annual rental to the State in the amount of \$3.00 per acre or fraction of an acre, subject to adjustment as prescribed by statute and regulation.

(2) The rental for each year is a credit against the royalty or net profit share as it accrues for that year from production on the lease.

(3) The lessee shall pay the annual rental in advance on or before the anniversary date of this lease. If the State office is not open for business on the annual anniversary date, the time for payment is extended to include the next day on which that office is open for business.

(c) Diligent Development; Continued Operation. The lessee shall diligently develop and continually operate the coal mine as prescribed by statute and regulation.

(d) Royalty Lessee shall pay the royalty of five percent of adjusted gross value of coal as set out in statute and regulation, subject to adjustment as prescribed by statute and regulation.

(e) Records. The lessee shall keep and have in its possession books and records (including records of expenses) showing the development, production, beneficiation, transportation, and disposition (including records of sales prices, volumes, and purchasers) of all coal produced from the leased area and any other records necessary to justify any items deducted in arriving at an adjusted gross value, if necessary for the purposes of computing royalty payments. The lessee shall permit the State or its agents to examine these books and records at all reasonable times and to make copies of those records. The lessee shall use generally accepted accounting practices, consistently applied.

(f) Inspection. The lessee shall permit at all reasonable times:

(1) Inspection by any duly authorized officer of the Department of Natural Resources of the leased premises and all surface and underground improvements, works, machinery, equipment, and such records pertaining to operations as may be required to verify compliance with the terms and conditions of this lease.

(2) The lessor to make copies of and extracts from such records pertaining to operations as may be required to verify compliance with the terms and conditions of this lease.

(g) Assignment; Binding Effect. The lessee may assign, sublease, or transfer this lease or any interest in or rights under this lease, but only upon approval of the State as prescribed by

statute and regulation. This lease, including Exhibits and Addendums, extends to and is binding on the heirs, executors, administrators, successors and assigns of the State and the lessee.

4. RIGHTS RESERVED BY STATE. (a) Rights Reserved. The State, for itself and others, reserves all rights not expressly granted to the lessee. These reserved rights include, but are not limited to, the rights set out in AS 38.05.125.

(b) Waiver of Conditions. The State reserves the right to waive any breach of a provision of this lease, but any such waiver extends only to the particular breach so waived and does not limit the rights of the State with respect to any future breach; nor will the waiver of a particular breach prevent cancellation of this lease for any other cause or for the same cause occurring at another time. Notwithstanding the foregoing, the State will not be deemed to have waived a provision of this lease unless it does so in writing.

5. SURRENDER. The lessee may at any time surrender all or part of the leased area as prescribed by statute and regulation.

6. RIGHTS AND OBLIGATIONS UPON TERMINATION OR SURRENDER.

(a) Delivery of leased area. Upon termination or surrender of this lease, and as prescribed by statute and regulation, the lessee shall deliver up the leased area or any portion of the leased area in good condition.

(b) Removal of property. Upon the termination or surrender of this lease as to all or any portion of the leased area, the lessee shall, within a period of one year after the termination, or as prescribed by statute and regulation, remove from the leased area or portion of the leased area all machinery, equipment, tools, and materials except as specifically authorized by the State. Upon expiration of that period, any machinery, equipment, tools, or materials that the lessee has not removed from the leased area or portion of the leased area become the property of the State and may be destroyed, removed or stored by the State at the lessee's expense.

7. DAMAGES. (a) Indemnity. The lessee shall indemnify the State for, and hold it harmless from, any claim, including but not limited to claims for loss or damage to property or injury to any person, caused by or resulting from any act or omission committed under this lease by or on behalf of the lessee. The lessee is not responsible to the State under this subparagraph for any loss, damage, or injury caused by or resulting from the sole negligence of the State.

(b) Waiver. The lessee expressly waives any defense to an action for breach of a provision of this lease, or to an action for damages, where such defense is based on the fact that the act or omission complained of was committed by an independent contractor. The lessee expressly agrees to assume responsibility and liability for all actions on its contractors, including independent contractors.

8. DEFAULT. The failure of the lessee to timely perform any obligations under this lease, or the failure of the lessee otherwise to abide by all provisions of this lease, constitutes default and will terminate any rights under this lease, subject to procedures prescribed in statute and regulation.

9. CANCELLATION. The State may cancel this lease at any time if it determines, after the lessee has been given written notice and a reasonable opportunity to be heard, that continued operations under this lease may cause or risk harm or damage to people, resources, property, or the environment.

10. AUTHORIZED REPRESENTATIVES. The commissioner of the Department of Natural Resources, State of Alaska, or the commissioner's designee, and the person executing this lease on behalf of the lessee will be the authorized representatives of their respective principals for the purposes of administering this lease. The State or the lessee may change the authorized representative or the address to which notices to that representative are to be sent by a notice given in accordance with Section 11.

11. NOTICES. (a) Any notices required or permitted under this lease must be by electronic media producing a permanent record or in writing which must be given personally or by registered or certified mail, return receipt requested, addressed as follows:

TO THE STATE:

TO THE LESSEE:

Commissioner
Department of Natural Resources
550 W. 7th Avenue, Suite 1400
Anchorage, AK 99501-3561

(b) Any notice under (a) of this section will be effective upon receipt.

12. STATUTES AND REGULATIONS. The operations under this lease are subject to all applicable State and federal statutes and regulations in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes and regulations placed in effect after the effective date of this lease. A reference to a statute or regulation concerning operations under this lease includes any change in that statute or regulation, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska or the United States of America to enact and enforce legislation or to promulgate and enforce regulations affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease.

13. INTERPRETATION. This lease is to be interpreted in accordance with the rules applicable to the interpretation of contracts made in the State of Alaska. The paragraph headings are not part of this lease and are inserted only for convenience. The State and the lessee expressly agree that the laws of the State of Alaska will apply in any judicial proceeding affecting this lease.

14. INTEREST IN REAL PROPERTY. It is the intention of the parties that the rights granted to the lessee by this lease constitute an interest in real property in the leased area.

15. WAIVER OF CONDITIONS. The State reserved the right to waive any breach of a provision of this lease, but any such waiver extends only to the particular breach so waived and does not limit the rights of the State with respect to any future breach; nor will the waiver of a particular breach prevent cancellation of this lease for any other cause or for the same cause occurring at another time. Notwithstanding the foregoing, the State will not be deemed to have waived a provision of this lease unless it does so in writing.

16. SEVERABILITY. If it is finally determined in any judicial proceeding that any provision of this lease is invalid, the State and the lessee may jointly agree by a written amendment to this lease that, in consideration of the provisions in that written amendment, the invalid portion will be treated as severed from this lease and that the remainder of this lease, as amended, will remain in effect.

17. LOCAL HIRE. The lessee is encouraged to hire and employ local and Alaska residents and companies, to the extent they are available and qualified, for work performed on the leased area. The lessees shall submit, with its permit application under AS 27.21, a proposal detailing the means by which the lessee will comply with this measure. The lessee is encouraged, in formulating this proposal, to coordinate with employment services offered by the State of Alaska and local communities and to recruit employees from local communities.

In witness whereof, the parties have executed this lease.

DATED: _____

STATE OF ALASKA, Department of Natural Resources

By: _____

Title: _____

DATED: _____

Lessee

By: _____

Title: _____

STATE OF ALASKA)
)
FOURTH JUDICIAL DISTRICT) ss.

This certifies that on the ____ day of _____, _____, before me, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing lease on behalf of the State of Alaska, Division of Mining, Land and Water, Department of Natural Resources. The said _____ executed said lease in my presence and after being duly sworn according to law, stated to me under oath that he is the _____ of the Division of Mining, Land and Water, Department of Natural Resources and has authority pursuant to law to execute the foregoing lease on behalf of the State of Alaska, acting through the Division of Mining, Land and Water, Department of Natural Resources and that he executed the same freely and voluntarily as the free and voluntary act and deed of the Division of Mining, Land and Water, Department of Natural Resources, for the State of Alaska.

Witness my hand and official seal in the day and year in this certificate written.

Notary Public in and for Alaska
My commission Expires: _____

STATE OF ALASKA)
)
FOURTH JUDICIAL DISTRICT) ss.

This certifies that on the ____ day of _____, _____, before me, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing lease on behalf of _____.

The said _____ executed said lease in my presence and after being duly sworn according to law, stated to me under oath that he is the _____ of _____ and has authority pursuant to law to execute the foregoing lease on behalf of _____, and that he executed the same freely and voluntarily as the free and voluntary act and deed of _____.

Witness my hand and official seal in the day and year in this certificate written.

Notary Public in and for Alaska
My Commission Expires: _____