

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

**550 W. 7th Avenue, Suite 900c
Anchorage, Alaska 99501-3577**

**Aleutians East Borough
ADL No. 233402
LEASE AGREEMENT
AS 38.05.083**

Effective this **3rd** day of **August 2020**, this lease agreement is entered into by the State of Alaska, hereafter referred to as "lessor," and **Aleutians East Borough**, hereafter referred to as "lessee," whether one or more, whose sole addresses for purposes of notification under this lease agreement are listed in section 28.

The lessor and the lessee agree that this lease, including all attachments and documents that are incorporated in this lease by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this lease including any attachments will be binding upon the parties and upon their respective successors and assigns. The lessor and the lessee further agree that this lease is conditioned upon satisfactory performance by the lessor and the lessee of all covenants and conditions contained in this lease. The lessee is aware of the provisions of Title 38, Alaska Statutes, Title 11, Alaska Administrative Code, and other applicable laws, regulations, and ordinances, and fully understands the duties and obligations of the lessee under this lease, and the rights and remedies of the lessor.

This lease is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this lease. A reference to a statute, regulation, or ordinance in this lease includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska, its political subdivisions, or the United States of America to enact and enforce legislation or to adopt and enforce regulations or ordinances 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. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this lease. This lease shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

1. Grant. This lease is issued under the authority of **AS 38.05.083** for a term of **ten (10)** years beginning on the **3rd** day of **August 2020**, and ending at 12 o'clock midnight on the **2nd** day of **August 2030**, unless sooner terminated, subject to: compensation as specified in section 2; the attached development plan approved by the State on **April 11, 2019**; and attached stipulations, if any, that are incorporated in and made a part of this lease, for the following, hereafter referred to as the "leasehold":

SW1/4 of Section 10 and NW1/4 of Section 15, Township 56 South, Range 74 West, Seward Meridian.

Those tide and submerged lands located in Zachary Bay, Alaska and further described as:

Grow-out area for submerged longline system for culture of sugar kelp, winged kelp, bull kelp, and giant kelp: 400 feet by 1088 feet = 9.99 acres

NE Corner Latitude:	55°20.373'N	Longitude:	160°36.288'W
SE Corner Latitude:	55°20.160'N	Longitude:	160°36.288'W
SW Corner Latitude:	55°20.160'N	Longitude:	160°36.417'W
NW Corner Latitude:	55°20.373'N	Longitude:	160°36.417'W

Excepting and reserving any general reservations to the lessor that are required by law and that may be stated elsewhere in this lease, and the following, which the state reserves for itself and others:

Subject to:

**The conditions and stipulations in Attachment A, Additional Stipulations.
Attachment B, Approved Development Plan, attached and made part of this lease agreement.**

2. Compensation. (a) The lessee shall pay to the lessor compensation as follows, without the necessity of any billing by the lessor: **\$1,575.00 due on or before August 3rd of each year.** The lessor may, upon 10 days' notice, review and copy any records of the lessee that are necessary to verify the lessee's compliance with this paragraph.

(b) In accordance with AS 38.05.105, the lease compensation is subject to adjustment by the lessor at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date. All reasonable costs of the adjustment, including reappraisal if required by the lessor, will be borne by the lessee.

3. Denial of Warranty. The lessor makes no warranty, express or implied, nor assumes any liability whatsoever, regarding the social, economic, or environmental aspects of the leasehold, including, without limitation, the soil conditions, water drainage, access, natural or artificial hazards that may exist, or the profitability or fitness of the leasehold for any use. The lessee represents that the lessee has inspected the leasehold and determined that the leasehold is suitable for the use intended, or has voluntarily declined to do so, and accepts the leasehold "as is" and "where is."

4. Use of Leasehold. Prior to execution of this lease and to commencing use or development of the leasehold, the lessee shall submit a development plan for the leasehold to the lessor and obtain the lessor's approval of the plan. Any use or development of the leasehold must be consistent with the development plan approved by the lessor. Any proposed revisions to the development plan must be submitted to the lessor for approval before any change in use or development occurs. The lessee shall use and occupy the leasehold in compliance with the approved development plan and all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect, including those of a building or zoning authority and those relating to pollution and sanitation control. The lessee may not permit any unlawful occupation, business, or trade to be conducted on the leasehold. The lessee shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The lessee shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements. The lessee agrees not to place any aboveground or underground fuel or chemical tanks on the leasehold without the prior written approval of the lessor.

5. Encumbrance of Leasehold. The lessee may not encumber or cloud the lessor's title to the leasehold, or any portion of the leasehold, nor enter into any lease, easement, or other obligation of the lessor's title without the prior written approval of the lessor.

6. Assignment of Interest. The lessee may not assign or sublet any interest held under this lease, including a security interest, without the prior written approval of the lessor. The lessor may approve such assignment or subletting if the lessor finds it to be in the best interest of the state. No such assignment or subletting will be effective until approved by the lessor in writing, and the assignee agrees to be subject to and governed by the provisions of this lease, any subsequent amendments to this lease, any additional stipulations, or reappraisal as deemed appropriate by the lessor, and all applicable laws, regulations, and ordinances in the same manner as the original lessee. No assignment or subletting of the leasehold, or any portion thereof, by the lessee will annul the lessee's obligation to pay the compensation required for the full term of this lease. Except as provided in this lease, no subdivision of the leasehold interest may occur without the prior written approval of the lessor.

7. Conditional Lease. If all or part of the leasehold has been tentatively approved, or approved, but not yet patented, by the United States to the lessor, then this lease will be conditioned upon receipt by the lessor of such patent. If for any reason the lessor does not receive patent, any compensation paid to the lessor under this lease will not be refunded. Any prepaid compensation for land to which patent is denied the lessor will be refunded to the lessee of record in the amount of the pro-rata portion of the unexpired term. The lessor will have no further liability to the lessee for the termination of the lease.

8. Payment of Taxes and Assessments. The lessee shall pay prior to delinquency all taxes and assessments accruing against the leasehold.

9. Section Line Rights-of-Way. If the leasehold borders on or includes one or more section lines, the lessor hereby expressly reserves unto itself and its successors and assigns a right-of-way or rights-of-way pursuant to AS 19.10.010.

10. Navigable and Public Waters. (a) Pursuant to AS 38.05.127 and 11 AAC 53.330, the lessor reserves a public access easement to and along all public or navigable water bodies that border on or are included in this leasehold. No public access easement may be obstructed or otherwise rendered incapable of reasonable use for the purposes for which it was reserved. No public access easement may be vacated, abandoned, or extinguished without the prior written approval of the lessor.

(b) The Public Trust Doctrine guarantees public access to, and the public right to use, navigable and public waters and the land beneath them for navigation, commerce, fishing, and other purposes. This lease is issued subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The lessor reserves the right to grant other interests to the leasehold consistent with the Public Trust Doctrine.

11. Condemnation of Leasehold or Improvements. If the whole or any part of the leasehold is taken by any authorized body or person vested with the power of eminent domain, by negotiation, court action, or otherwise, the following provisions control:

(1) Taking of the entire leasehold. If all of the leasehold is taken by condemnation, this lease and all rights of the lessee will immediately terminate, and the compensation will be adjusted so that it is due only until the date the lessee is required to surrender possession of the leasehold. The lessor is entitled to all the condemnation proceeds, except that the lessee will be paid the portion of the proceeds attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned leasehold by the lessee in accordance with the approved development plan.

(2) Taking of substantial part of the leasehold. If the taking is of a substantial part of the leasehold, the following rules apply:

(A) If the taking by condemnation reduces the ground area of the leasehold by at least 30 percent or materially affects the use being made by the lessee of the leasehold, the lessee has the right to elect to terminate the lease by written notice to the lessor not later than 180 days after the date of taking.

(B) If the lessee elects to terminate, the provisions in subsection (1) of this section govern the condemned portion of the leasehold and the covenants and conditions of the lease govern disposal of the remainder of any buildings or improvements made by the lessee in accordance with the approved development plan.

(C) If the lessee does not elect to terminate, the lease continues and the lessor is entitled to the full condemnation proceeds except the portion attributable to the fair market value, as determined in the condemnation proceedings, of any buildings or improvements taken that were placed on the condemned portion of the leasehold by the lessee in accordance with the approved development plan. Compensation at the existing rate will terminate on the date the lessee is required to surrender

possession of the condemned portion of the leasehold. Except as it may be adjusted from time to time under the covenants and conditions of the lease and applicable statutes, compensation for the balance of the term will be adjusted by the lessor to reflect the taking.

(3) Taking of insubstantial part of the leasehold. If the taking by condemnation reduces the ground area of the leasehold by less than 30 percent and the lessor determines that the taking is of such an insubstantial portion that the lessee's use of the leasehold is not materially affected, the lessee may not elect to terminate the lease and the compensation provisions of subsection 2(C) of this section will govern.

12. Valid Existing Rights. This lease is subject to all valid existing rights, including easements, rights-of-way, reservations, or other interests in land in existence on the date of execution of this lease.

13. Inspection. The lessor will have reasonable access to the leasehold for purposes of inspection.

14. Mineral Reservations. This lease is subject to the reservations required by AS 38.05.125 and the rights and obligations imposed by AS 38.05.130.

15. Concurrent Use. This lease is subject to reasonable concurrent uses as provided under Article VIII, Section 8 of the Constitution of the State of Alaska. The concurrent user who is found to be at fault for damage or injury arising from noncompliance with the terms governing the user's concurrent use is liable for damages and the user's interest is subject to forfeiture or termination by the lessor. In this context, the term "concurrent user" includes the lessee and any other person or entity who lawfully uses the land subject to this lease, but does not include the State of Alaska.

16. Surface Resources. Unless otherwise provided by this lease or other written authorization, the lessee may not sell or remove from the leasehold any timber, stone, gravel, peatmoss, topsoil, or any other material valuable for building or commercial purposes. Material required for the development of the leasehold may be used only in compliance with the approved development plan.

17. Appropriation or Disturbance of Waters. During the term of this lease, the lessee will have the right to apply for an appropriation of ground or surface water on the leasehold in accordance with AS 46.15 and 11 AAC 93.060.

18. Acquisition of Rights or Interests. Any right or interest acquired during the term of this lease and accruing to the benefit of the leasehold will remain appurtenant to the leasehold, and may not be severed or transferred from the leasehold without the prior written approval of the lessor. In the event of termination or forfeiture of this lease, any such right or interest will vest in the lessor.

19. Land Alterations Due to Natural or Artificial Causes. The interest described in this lease constitutes the entire leasehold. If, through natural or artificial causes, accretion or reliction of land occurs contiguous to the leasehold, the Lessee has no right to occupy or use the accreted land unless a separate lease is entered with the Lessor with respect to such lands. The rules of law usually applicable to accretion or reliction of land do not apply to this lease, nor to the interest described in this lease.

20. Waiver or Forbearance. The receipt of compensation by the lessor, with or without knowledge of any default on the part of the lessee, is not a waiver of any provision of this lease. No failure on the part of the lessor to enforce a covenant or condition of this lease, nor the waiver of any right under this lease by the lessor, unless in writing, will discharge or invalidate the application of such covenant or condition. No forbearance or written waiver affects the right of the lessor to enforce any covenant or condition in the event of any subsequent default. The receipt of compensation by the lessor after termination or any notice of termination will not reinstate, continue, or extend this lease, or destroy, or in any manner impair the validity of any notice of termination that may have been given prior to receipt of the compensation, unless specifically stated by the lessor in writing.

21. Default and Remedies. (a) Time is of the essence in this lease. If the lessee defaults on the performance

of any of the covenants or conditions of this lease, and the default is not remedied within 60 days after the lessor issues written notice of such default to the lessee and to the holder of a security interest in the leasehold approved by the lessor, or within any additional period the lessor allows for good cause, the lessee will be subject to legal or any other administrative action deemed appropriate by the lessor, including termination of this lease. The lessor may, in the notice of the default or in a separate written notice, state that if the default is not remedied, this lease shall terminate on a date certain, which shall be at least 60 days after issuance of the notice of default. Upon the date specified in such notice, unless the default has been remedied, the lease shall expire automatically without further notice or action by the lessor and this lease and all rights of the lessee under the lease shall terminate. Upon termination of the lease the lessor shall have an immediate right to possession of the leasehold and any possession by the lessee shall be unlawful. It is specifically agreed that no judicial action shall be necessary to terminate this lease or to allow the lessor to retake possession in the event of default by the lessee. No improvements may be removed from the leasehold while the lease is in default except with the lessor's prior written approval. If this lease is terminated for default, all compensation paid by the lessee is forfeited to the lessor. The lessor is not liable for any expenditures made or undertaken by the lessee under this lease. Any costs or fees, including attorney's fees, reasonably incurred by the lessor for the enforcement of this lease, shall be added to the obligations due and payable by the lessee.

(b) The rights, if any, of third-party security interest holders or lienholders are controlled solely by AS 38.05.103 and 11 AAC 58.590. If the lessee fails to remedy the default within the time allowed in subsection (a) of this section, the holder of an approved security interest who has received notice under subsection (a) of this section may remedy the default. The holder shall act within 60 days from the date of receipt of notice under subsection (a) of this section, or within any additional period the lessor allows for good cause.

(c) The lessor may, at the lessor's option, following the lessee's default and failure to remedy, or after termination of this lease due to such default and failure to remedy, accelerate the unpaid compensation for the remainder of the term of this lease. The lessee's obligation to pay such accelerated rent to the lessor survives termination of this lease.

(d) If this lease is terminated, or all or any portion of the leasehold is abandoned by the lessee, the lessor may immediately enter, or re-enter and take possession of the leasehold, and without liability for any damage, remove all persons and property from the leasehold and may, if necessary, use summary proceedings or an action at law. The words "enter" and "re-enter" as used are not restricted to their technical legal meaning. Any entry, re-entry, possession, repossession, or dispossession by the lessor, whether taken with or without judicial action, does not absolve, relieve, release, or discharge the lessee, either in whole or part, of any liability under the lease.

(e) The lessor, upon or at any time after giving written notice of any default, may enter or re-enter the leasehold to remedy any default by the lessee or exercise any right given under this lease, all without the intervention of any court being required. The curing of such default shall not be deemed for any purpose to be for the benefit of the lessee.

(f) At any time after termination of this lease, the lessor may re-let the leasehold, or any part thereof, in the name of the lessor for such term and on such conditions as the lessor may determine, and may collect and receive the compensation therefor. The lessor shall not be responsible or liable for failure to re-let the leasehold or for any failure to collect any compensation due upon such re-letting, nor shall the lessor be required to account for or pay to the lessee any excess compensation received as a result of such re-letting. The lessee shall be liable for any deficiency, and for all costs, expenses, and fees incurred by the lessor arising out of the default, including the lessor's efforts to re-let the leasehold.

(g) No right or remedy conferred upon or reserved to the lessor in this lease or by statute, or existing in law or equity, is intended to be exclusive of any other right or remedy, and each and every right shall be cumulative.

22. Disposition of Improvements and Chattels After Termination. AS 38.05.090 will govern disposition of any lessor-approved chattels or improvements left on the leasehold after termination. At the lessor's sole option, improvements not approved by the lessor shall be removed from the leasehold and the site restored to its original

condition at the lessee's sole expense, or be forfeited to the lessor. The lessee shall be liable to the lessor for any costs, expenses, or damages arising out of the disposition of improvements not approved by the lessor, and may be required to pay rent on any improvements or chattels left on the parcel in accordance with 11 AAC 58.680.

23. Indemnity to Lessor. The lessee shall indemnify, defend, and hold the lessor harmless from and against all claims, demands, judgments, damages, liabilities, penalties, and costs, including attorney's fees, for loss or damage, including but not limited to property damage, personal injury, wrongful death, and wage, employment, or worker's compensation claims, arising out of or in connection with the use or occupancy of the leasehold by the lessee or by any other person holding under the lessee, or at the lessee's sufferance or invitation; and from any accident or fire on the leasehold; and from any nuisance made or suffered on the leasehold; and from any failure by the lessee to keep the leasehold in a safe and lawful condition consistent with applicable laws, regulations, ordinances, or orders; and from any assignment, sublease, or conveyance, attempted or successful, by the lessee of all or any portion of the leasehold or interest therein contrary to the covenants and conditions of this lease. The lessee holds all goods, materials, furniture, fixtures, equipment, machinery, and other property whatsoever on the parcel at the sole risk of the lessee, and shall defend, indemnify and hold the lessor harmless from any claim of loss or damage by any cause whatsoever, including claims by third parties.

24. Insurance. If required by the lessor, the lessee shall obtain insurance in an amount determined by the lessor to be sufficient. The lessor shall be named as an additional insured party of any such insurance. The types and amount of insurance shall be specified in the attached stipulations made a part of this lease agreement and may be adjusted periodically. The lessee shall maintain that insurance as long as required by the lessor. Any insurance acquired by the lessee for the purpose of providing insurance coverage under this lease must be issued by an insurer authorized to do business in the State of Alaska under the provisions of AS 21.09.010 and AS 21.27.010 for the type of policy being written.

25. Bonding. If required by the lessor, the lessee shall furnish a bond, cash deposit, certificate of deposit, or other form of security acceptable to the lessor in an amount determined by the lessor to be sufficient to ensure faithful performance of the covenants and conditions of this lease, and to cover the cost of site cleanup and restoration and any associated costs after termination of the lease. The amount and conditions of the bond shall be specified in the attached stipulations made a part of this lease agreement. The lessee shall maintain the bond as long as the lessor deems necessary, and in the amount required by the lessor, which amount may be adjusted periodically.

26. Environmental Compliance. (a) The lessee shall, at the lessee's own expense, comply with all existing and hereafter enacted environmental responsibility laws ("Environmental Laws"). The lessee shall, at the lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws.

(b) Should the Authority require that a remedial action plan be prepared and that a remedial action be undertaken because of the presence of, or any disposal, release, spill, or discharge, or threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, then the lessee shall, at the lessee's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans. The lessee's obligations under this section shall arise if there is any event or occurrence at the leasehold during the term of this lease, or arising out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease, that requires compliance with the Environmental Laws.

(c) At no expense to the lessor, the lessee shall promptly provide all information requested by the lessor for preparation of affidavits or other documents required by the lessor to determine the applicability of the Environmental Laws to the leasehold, and shall sign the affidavits promptly when requested to do so by the lessor.

(d) The lessee shall indemnify, defend, and hold harmless the lessor from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of or in any way connected with the presence of or any disposal, release, spill, or discharge or any threatened disposal, release, spill, or discharge of or contamination by hazardous materials at the leasehold that occurs during the term of the lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease; and from all fines, penalties, suits, judgements, procedures, claims, demands, liabilities, settlements, and actions of any kind arising out of the lessee's failure to provide all information, make all submissions, and take all steps required by the Authority under the Environmental Laws or any other law concerning any spill, discharge, or contamination that occurs during the term of this lease or arises out of or in connection with the lessee's use or occupancy of the land described in section 1 of this lease.

(e) The lessee agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water.

(f) In any court action or administrative proceeding, in addition to all other applicable presumptions, it shall be rebuttably presumed that any environmental contamination of the leasehold (i) has been released on the leasehold; (ii) has resulted from acts or omissions of the lessee or its agents; and (iii) has occurred during the term of this lease. The lessee has the burden of rebutting the presumptions by clear and convincing evidence.

(g) This section of this lease does not in any way alter the State of Alaska's powers and rights or the lessee's duties and liabilities under Title 46 (or its successor) of the Alaska Statutes or other state, federal, or municipal statutes, regulations, or ordinances. For example, notwithstanding the provisions of this lease, the State of Alaska shall not be precluded from claiming under AS 46.03.822 that the lessee is strictly liable, jointly and severally, for damages and costs incurred by the state for clean up of contamination on the leasehold. The obligations and provisions of this section 26 shall survive the termination of this lease.

(h) As used in this lease, the term "hazardous materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any municipal governmental authority, the State of Alaska, or the United States government.

27. Surrender of Leasehold. Upon the expiration, termination, or cancellation of this lease, the lessee shall peacefully leave and deliver up all of the leasehold in good, sanitary, and marketable condition, order, and repair.

28. Notices. (a) Any notice or demand by the lessee will be made by hand delivery to the Director, Division of Mining, Land and Water, or by certified mail, postage prepaid, addressed as follows (or to a new address that the lessor designates in writing), with delivery occurring upon receipt by the lessor:

To the Lessor:

Division of Mining, Land and Water
550 W. 7th Avenue, Suite 900C
Anchorage, Alaska 99501-3577

(b) Any notice or demand by the lessor will be issued as provided in 11 AAC 02.040(c). If issuance is by mail, the notice or demand will be addressed as follows (or to a new address that the lessee or its successor in interest designates in writing):

To the Lessee:

Aleutians East Borough
3380 C Street, Suite 205
Anchorage, AK 99503

The lessor will issue a copy of any such notice or demand to each holder of a security interest in the leasehold whose assignment has been approved by the lessor under section 6 of this lease. Any security interest not approved as provided in section 6 is insufficient to require notice by the lessor under AS 38.05.103.

(c) Any notice or demand regarding the lease must be in writing and will be complete if given as set out above.

29. Penalty Charges. The lessee shall pay a fee for any late payment or returned check issued by the lessee as follows:

(1) Late Payment Penalty: The greater of either the fee specified in 11 AAC 05.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account until payment is received by the lessor. Acceptance of a late payment or of a service charge for a late payment is subject to the lessor's rights under sections 20 and 21 of this lease.

(2) Returned Check Penalty: A returned check fee as provided in 11 AAC 05.010 will be assessed for any check on which the bank refuses payment. If the bank refuses payment, the default termination date remains the same. Late penalties under subsection (1) of this section shall continue to accumulate.

30. Modification. This lease may be modified or amended only by a document signed by both parties. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

31. Choice of Law. This lease shall be construed under the laws of the State of Alaska. The lessee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this lease.

32. Severability of Clauses of Lease Agreement. If any clause or provision of this lease is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the lessor and the lessee agree that the remainder of this lease will not be affected, and in lieu of each clause or provision of this lease that is illegal, invalid, or unenforceable, there will be added as a part of this lease a clause or provision as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

By signing this lease, the lessor and the lessee agree to be bound by its provisions.

LESSEE:

Aleutians East Borough

LESSOR:

Samantha Carroll
Regional Manager, Southcentral Regional Land Office

STATE OF ALASKA)
) ss.
_____**Judicial District**)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
_____**Judicial District**)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, of the Division of Mining, Land and Water of the Department of Natural Resources of the State of Alaska, who executed the foregoing lease on behalf of the State of Alaska, and who is fully authorized by the State to do so.

Notary Public in and for the State of Alaska
My commission expires: _____

Attachment A
Additional Stipulations

ADL 233402 – Aleutians East Borough

9.99-Acre Aquatic Farm Lease
Annual Lease Fee = **\$1,575.00**
Annual Lease Fee Due by: **August 3rd**
Commercial Use Requirement (CUR): **\$15,000 Annually**
(CUR begins no later than the 5th year of operation)

1. **Authorized Officer (AO):** The Authorized Officer (AO) for the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), is the Regional Manager or designee.

2. **Preference Right:** No preference right to a sale of this leasehold is granted or implied by the issuance of this Lease. Any renewal of this Lease will be subject to current statutes and regulations at the time of Lease expiration.

3. **Lease Utilization:** [Section 4 of the Lease document is hereby amended to include the following:](#) In accordance with 11 AAC 58.510, the lessee is bound to the approved Development Plan submitted as part of the application for Lease. Use of the land or any portion of it, for purposes other than those specified in the Development Plan constitutes a breach of the Lease and may result in revocation. Failure to develop and/or utilize the leased site for a period of five years or more may, at the discretion of the AO, constitute grounds for termination of the Lease.

4. **Modifications to the Development Plan:** [Sections 4 & 30 of the Lease document are hereby amended to include the following:](#) To adequately address any modifications to the approved Development Plan, the lessee will be required to provide advance written notice to the AO for approval of those changes prior to construction or implementation and must be accompanied by the amendment fee required by 11 AAC 05.010. The AO reserves the right to reevaluate the Lease compensation and other terms and conditions of the Lease prior to approval. No modifications are approved unless specifically authorized in writing by the AO.

However, under this paragraph:

- (A) the following changes do not require an amendment of the Development Plan:
 - (i) any change in the species or number of shellfish or aquatic plants being raised if the change is permitted by the Department of Fish and Game;
 - (ii) a change in the number or type of rearing structures authorized within the lease boundaries, if the change does not increase obstructions to navigation or to other public use;

- (B) the department will not authorize a proposed amendment to the lease development plan for a “change of use”; for the purpose of this subparagraph and AS 38.05.083(d), “change of use” means a change from the raising of shellfish and aquatic plants to any other use; and

- (C) the approval of an amendment of an aquatic farm site lease does not relieve the lessee of the obligation to obtain other necessary authorizations.

Attachment A
Additional Stipulations

5. Commercial Use Requirement: The lessee shall report annually to the department, no later than January 31, on sales during the previous year of shellfish and aquatic plants raised on the lease site, not including sales of

may fulfill this paragraph's requirement for a sales report by asking the Department of Fish and Game to give a copy of the information to the department.

Failure to comply with the commercial-use requirement set out in 11 AAC 63.030(b) is a default and cause for termination, unless the lessee shows to the AO's satisfaction that the failure is due to circumstances beyond the lessee's reasonable ability to foresee or control.

The commercial-use requirement for this 9.99-acre lease is \$15,000 in annual sales, and must be met by the commencement of the fifth (5th) year of the term and continued annually for the remaining lease term.

6. Inspections: Section 13 of the Lease document is hereby amended to include the following: The AO may designate representatives to inspect the leased area at any time. Sites which are determined to be in noncompliance will be subject to re-inspection for which the lessee may be assessed, at the AO's discretion, either a fee of \$100 or a fee equal to the actual expenses incurred by the Division of Mining, Land and Water (11 AAC 05.010) for the inspection.

The AO reserves the right:

- (A) of reasonable access to the leasehold for purposes of inspection, including the lessee's improvements and rearing structures; when the department inspects the lessee's rearing structures, the department will not lift or handle underwater rearing structures without prior notice to the lessee; the notice to the lessee may include notice by the Department of Fish and Game in accordance with AS 16.40.150(b); and
- (B) upon 10 days' prior notice, to inspect records of the lessee necessary to verify the lessee's compliance with the lease provisions.

7. Request for Data/Additional Information: For purposes of information and review, the AO may require the lessee to furnish data related to the use, maintenance, and operational activities undertaken in connection with this leasehold. The lessee shall furnish the required data as soon as possible or as otherwise required under the terms of this Lease.

8. Assignment: Section 6 of the Lease document is hereby amended to include the following: In the event the lessee desires to transfer their interest of this Lease to another party, the lessee must submit a letter to the AO requesting the assignment and include a copy of the draft Assignment Agreement with that letter for review. The AO reserves the right to renegotiate new terms or conditions for the Lease prior to approving any assignment. The AO reserves the right to require an assignment between the lessee and another party in the event of a change in corporate ownership, or LLC/LLP membership/name change.

9. Performance Guaranty: Per section 25 of the Lease agreement: The lessee must post a performance guaranty in the amount of **\$2,500.00** to secure faithful performance with all terms and conditions of the Lease and to insure

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site restoration of the leasehold. This performance guaranty must remain in effect for the duration of the Lease term or until released in writing by the AO. **Failure by the lessee to provide replacement security shall be grounds for the AO to make a claim upon the existing security to protect the lessor's interests.**

If three or more lessees post an association bond to cover all of their leases, the minimum security amount is 50 percent of the amount individually calculated for each lease. The association must designate an agent for notification purposes. The association has the right to be notified of the termination of a lease covered by its association bond. If neither the former lessee nor the association completes the site restoration as required by AS 38.05.090, the department will use the association bond for this purpose, up to 100 percent of the amount individually calculated for that lease. The association may remove a lease in good standing from the coverage of its association bond after 60 days' notice to the department, during which time the affected lessee must make other arrangements to comply with this section. A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of the association bond.

The guaranty amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments to the Lease, assignments, reappraisals, changes in the Development Plan, approval of a reclamation plan, any change in the activities conducted, or performance of operations conducted on the leasehold and as a result of any violations to the Lease agreement.

The guaranty may be utilized by the AO to cover actual costs incurred by the State of Alaska to pay for any necessary corrective actions in the event the lessee does not comply with the site utilization, restoration requirements and/or other stipulations contained in the Lease agreement. If the lessee fails to perform the obligations under the Lease agreement within a reasonable timeframe, the AO may perform the lessee's obligations at the lessee's expense. The lessee agrees to pay within 60 days following notice, all costs and expenses reasonably incurred by the State of Alaska as a result of the failure of the lessee to comply with the terms and conditions of the Lease agreement. The provisions of this authorization shall not prejudice the State's right to obtain a remedy under any applicable law or regulation. The performance guaranty will be released upon expiration of the Lease provided that all terms and conditions of the Lease have been met, including restoration of the leasehold to a safe and clean condition found acceptable by the AO.

10. **Insurance:** Per section 24 of the Lease agreement: The lessee is required to carry commercial liability insurance with the State of Alaska listed as an “**additional insured party**”. The case number **ADL 233402** is to be referenced on the policy.

Insurance is required and is subject to annual review and adjustment by the AO. The AO may require a reasonable increase based on a change in the lessee's Development Plan or with increased risk. The insurance policy(s) must be written by a company(s) on the Division of Insurance's "admitted list" and the broker/agent must be licensed to do business in the State. If surplus lines insurance is provided, the broker must have a surplus broker license and be listed on the "surplus lines insurance list". Additional information regarding the admitted and surplus lines lists may be obtained from the Division of Insurance at (907) 269-7900.

a) Consult, as appropriate, with an insurance professional licensed to transact the business of insurance under Alaska Statute, Title 21, to determine what types and levels of insurance are adequate to protect the lessee and lessor (the State, its officers, agents and employees) relative to the liability exposures of the lessee's commercial operations.

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b) Secure or purchase at lessee's own expense, and maintain in full force at all times during the term of the Lease, adequate insurance policies and coverage levels recommended by an insurance professional, licensed to transact the business of insurance under Alaska Statute, Title 21, and acceptable to the State of Alaska. The State will expect to see at a minimum, the following types of coverage:

- **Commercial General Liability Insurance:** The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the Division of Risk Management, Alaska Department of Administration.

- **Workers' Compensation Insurance:** The lessee shall provide and maintain, for all its employees, Workers' Compensation Insurance as required by AS 23.30.045. Where applicable, coverage must comply with any other statutory obligations, whether Federal (i.e. U.S.L. & H or Jones Act) or other State laws in which employees are engaged in work on the premises. The insurance policy must contain a waiver of subrogation clause in favor of the State of Alaska.

c) Provide proof of insurance to the AO on a yearly basis. The certificate must provide for a 30-day prior notice to the State of Alaska in the event of cancellation, nonrenewal, or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of the Lease and shall be grounds, at the discretion of the AO, for termination of the Lease. Generally, the AO will rely upon the best professional judgment of the licensed insurance agent and, at renewal, the agent's annual reassessment of the insured's liability exposure for determination of adequate levels of coverage. The AO reserves the right to require additional coverage if, in its discretion, it determines that it may be warranted.

In the event the lessee becomes aware of a claim against any of its liability coverage, the lessee shall notify, and provide documentation and full disclosure of the claim to the AO within 20 days.

11. **Spill Response:** [Section 26 of the Lease document is hereby amended to include the following:](#) The lessee is responsible for preventing fuel, hydraulic fluid, and oil spills that could result in contamination of contiguous land and water. Petroleum product spills shall be cleaned up immediately and any contaminated earth or vegetative materials shall be disposed of as required by the Alaska Department of Environmental Conservation regulations. To facilitate rapid spill response, adequate sorbent materials (i.e., material that collects or absorbs petroleum products while at the same time repels water) will be kept on site to be used in the event of a spill. Should any unlawful discharge, leakage, spillage, emission, or pollution of any type occur due to lessee activities, the lessee shall, at its expense, be obligated to clean the area to the reasonable satisfaction of the State of Alaska.

12. **Spill Notification:** [Section 26 of the Lease document is hereby amended to include the following:](#) The lessee is responsible for notifying the State of Alaska of any pollutants they have caused to be discharged, released, or spilled in or around the project area by contacting the Division of Mining, Land and Water Hazardous Materials Coordinator at (907) 269-8552 and the Department of Environmental Conservation Southcentral Area Response Team Office at (907) 269-3063 during business hours (after hours call the Department of Environmental Conservation Spill Hotline at (800) 478-9300) for the following situations:

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Oil/Petroleum Releases:

To Water

- *Any* release of oil to water *must be reported* as soon as the lessee has knowledge of the discharge.

To Land

- Release(s) of oil **in excess of 55 gallons** must be reported as soon as the lessee has knowledge of the discharge.
- Release(s) of oil **between 10 and 55 gallons** must be reported within 48 hours after the lessee has knowledge of the discharge.
- The lessee is responsible for providing, on a monthly basis, a written record of any discharge of oil **between 1 to 10 gallons**.

Within Impermeable Secondary Containment Area

- Any release of oil **in excess of 55 gallons** must be reported within 48 hours after the lessee has knowledge
- of the discharge.

Hazardous Substance Releases:

- Release(s) of all hazardous substances (other than oil) **in any amount** must be reported as soon as the lessee has knowledge of the discharge.

The lessee is responsible for following all timelines, and submitting all required information as outlined in 18 AAC 75.300 and other applicable spill regulations under Article 3.

13. Historic Preservation: The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any State-owned historic/prehistoric archaeological or paleontological site without a lease from the commissioner. Should any sites be discovered during the course of field operations, activities that may cause damage will cease and the Office of History and Archaeology in the Division of Parks and Recreation (907) 269-8721/8720/8722 and the appropriate coastal district shall be notified immediately.

14. Incurred Expenses: All expenses incurred by the lessee connected with the exercise of the privileges covered by this authorization shall be borne solely by the lessee and the State of Alaska shall in no way be held liable for said expenses.

15. Navigation: The United States Coast Guard (USCG) shall be contacted prior to placing any aquatic farm structures under this lease to determine lighting or marking requirements, such as buoys, necessary for the protection of maritime navigation, in accordance with Title 33, Code of Federal Regulations, Part 64. Required markings of this nature are Private Aids to Navigation, and must be subject to an approved permit. The USCG may be reached at the following address and phone number: Commander, 17th Coast Guard District, P. O. Box 25517, Juneau, AK 99802-5517, telephone (907) 463-2254.

16. Site Requirements: The lessee is required to adhere to the following:

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- (A) Visibly mark the corners of the site and in accordance with USCG and ADF&G (5 AAC 41.277) marking requirements;
- (B) All improvements shall be secured utilizing anchoring methods with sufficient weight and holding capability to keep them in their authorized location(s) and must be retrievable upon expiration, termination, or cancellation of the lease. Anchoring systems for floating facilities moored for periods of more than 14 days must be approved by the Regional Manager and the USCG;
- (C) The use of adjacent uplands for activities related to the aquatic farm site, including shore ties, is not authorized under this lease. Written permission from the upland owner and authorization from this department must be obtained prior to any use of the adjacent uplands; and
- (D) Any commercially harvested wild stock acquired under AS 16, a fishery administered by DFG, may be held within the lease boundary before transporting to market. If DFG allows this activity within the lease boundary, the lessee is required to comply with DFG's operation permit requirements including clearly identifying and keeping the commercially harvested wild stock separate from any farmed product.

17. Lease Compensation: An administrative lease fee schedule for aquatic farm sites has been approved by the Division of Mining, Land and Water effective March 15, 2020 through March 16, 2022 under Appraisal Report 2522-14. The lease fee schedule is subject to review every two years. The annual rent for the proposal based on an 9.99-acre farm site is **\$1,575.00**. (The annual fee is calculated at \$450 for the first acre, or portion thereof, plus \$125 for each additional acre, or portion thereof.) The lease is subject to review of the annual rent every 5 years. In other words, should the fee be increased during the term of a lease, the lease will be amended at five-year intervals for fee adjustment. The lease fee is due on or before the date determined with authorization of the lease. **It is the responsibility of the lessee to submit the annual lease payment.** A courtesy notice of the lease fee may not be sent by the State.

18. Lease Expiration and Site Reclamation: No later than one (1) year prior to lease expiration, the lessee shall file with the AO:

- a) A complete renewal/reissuance lease application; or
- b) An approved reclamation plan for the leasehold. *Reclamation plans must include a description of the methods and techniques that will be used to rehabilitate affected areas of the leasehold. The plan must also include a specific time line showing when each step of the restoration process will be completed.*
- c) A complete renewal/reissuance lease application; or
- d) An approved reclamation plan for the leasehold. Reclamation plans must include a description of the methods and techniques that will be used to rehabilitate affected areas of the leasehold. The plan must also include a specific time line showing when each step of the restoration process will be completed.

Attachment B Development Plan

PROJECT DESCRIPTION

Aleutians East Borough, Zachary Bay

4/11/19

Site Location

The proposed site is located approximately 12 nautical miles northwest of the city of Sand Point, Alaska (Figure 1). The site is located within Zachary Bay, a large protected bay on the north side of Unga Island, in the Alaska Peninsula. The parcel will be arranged parallel to the shoreline on the southeastern portion of the bay. The parcel is located at minimum 800 ft away from the shoreline where there is patchy-continuous presence of rockweed and soft brown kelps (Alaska ShoreZone). There is an anadromous stream located approximately 1.5 miles away from the site (Figure 2).

Site Dimensions and Total Acres

The proposed aquatic farm site is composed of one parcel that will be located on state-owned subtidal lands, totaling approximately 10 acres total. The parcel boundary is 400 ft x 1088 ft. (10 acres) and the growing area within the parcel footprint is 350 ft x 688 ft (approximately 5.5 acres)(Figure 3).

Species Intended

- Sugar Kelp (*Saccharina latissima*) – 10 longlines
- Bull Kelp (*Nereocystis luetkeana*) – 10 longlines
- Winged Kelp (*Alaria marginata*) – 10 longlines
- Giant Kelp (*Macrocystis pyrifera*) – 5 longlines

Culture Methods

A workskiff (20') will be used to outplant seeded lines, adjust lines, monitor and collect data on crop. Outplanting will occur in November. Seedstock cultivated on seedstring wound onto PVC pipes will be deployed onto longlines, and affixed using handtied 60-day biodegradable escape cord. Outplanting will occur on a cooler, overcast day with minimal wind. Husbandry activities include biweekly monitoring during the growing season (November-May) for: environmental conditions (water quality, light, salinity, pH, nutrients), growth (biomass, length), line entanglement and biofouling (rate/presence) - any biofouling present will be culled and recorded; depth maintenance. We will also conduct monthly monitoring of the natural environment and seafloor using an underwater ROV along specified transects to assess any impact on the natural environment; as of the initial survey there is little to no presence of aquatic plants, demersal fish or benthos (Figure 5).

Gear and Equipment

There will be a 25 ft perimeter buffer along the east and west sides of the parcel to allow for a 58 ft seine vessel to stay within the lease area when working. The farm design includes thirty-five (35) 688 ft of submerged longlines spaced 10 ft apart using weighted grounding lines for growing kelp, maintained at 10 ft below the surface. Each line will use two (2) 400 lb anchors, two (2) polyform A-3 buoys (17" x 23") at each end, twenty-three (23) polyform LD-1 buoys (8.6" x 19") spaced 30 ft apart along the line. Each line will have five (5) control line dropper systems; every 4th LD-1 buoy will be attached to a 10' long 1" PVC pipe with a lobster spindle and loop to attach the growing line, with a 10# cement weight at the bottom. Each longline anchor will be secured in waters 36 ft (MLLW), and will employ 200 ft of additional scoping line at either end of each growing longline, which can be individually adjusted for depth. Crosslines will be installed across the north, middle, and south sides of the growing area. Each crossline will use 470 ft (350 ft across + 60 ft anchoring line on either end). The middle cross-longline will use one (1) 600 lb and two (2) 400 lb anchors on either end (6 anchors total) (Figure 3 & 4).

Attachment B Development Plan

Harvest Methods

Seine fishing vessels (58') will be used to access the site, harvest the crop, and transport/move farm gear and equipment. Seine vessels will be modified to harvest kelp using hydraulic winches and net reels to haul longlines, and seaweed will be manually cut with a sharp knife and placed directly into the refrigerated fish hold with seawater for transport, until offloaded at processor facility. Harvest will occur March-May, on cooler overcast days with minimal wind during low tide. Upon harvest, we will collect data on production (yield per ft, survival). Once harvest is complete, all gear including anchoring systems will be removed from the water, cleaned and stored – then redeployed again for the next season.

Support Facilities

No support or upland facilities will be used.

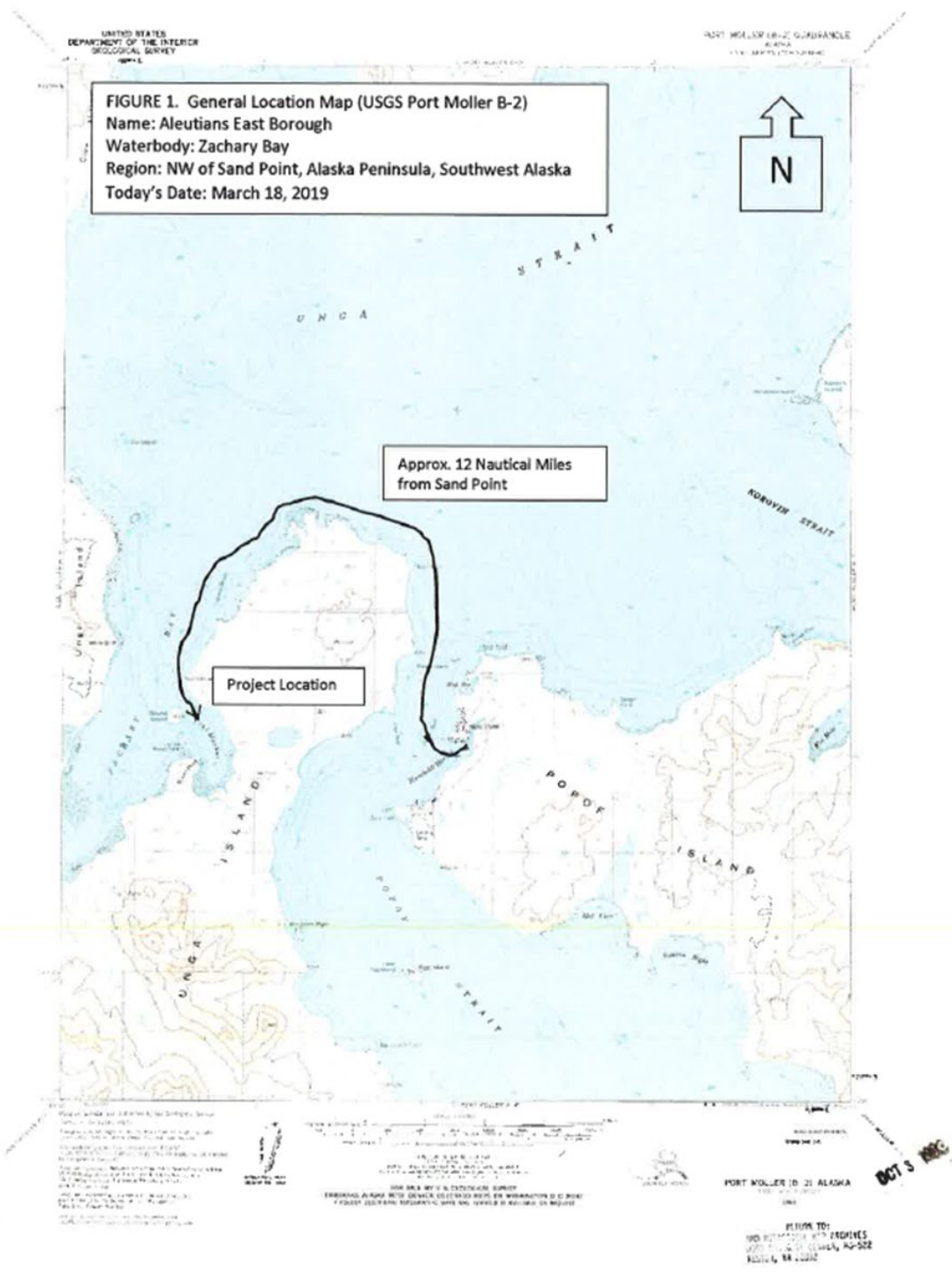
Access to Site

Access to the site is by seine fishing vessel from Sand Point (towing workskiff behind). The site is located approximately 800 ft from any existing kelp identified along the shoreline. The site is accessible via boat is water deep enough and with enough distance to avoid contact with known kelp beds (Figure 3).

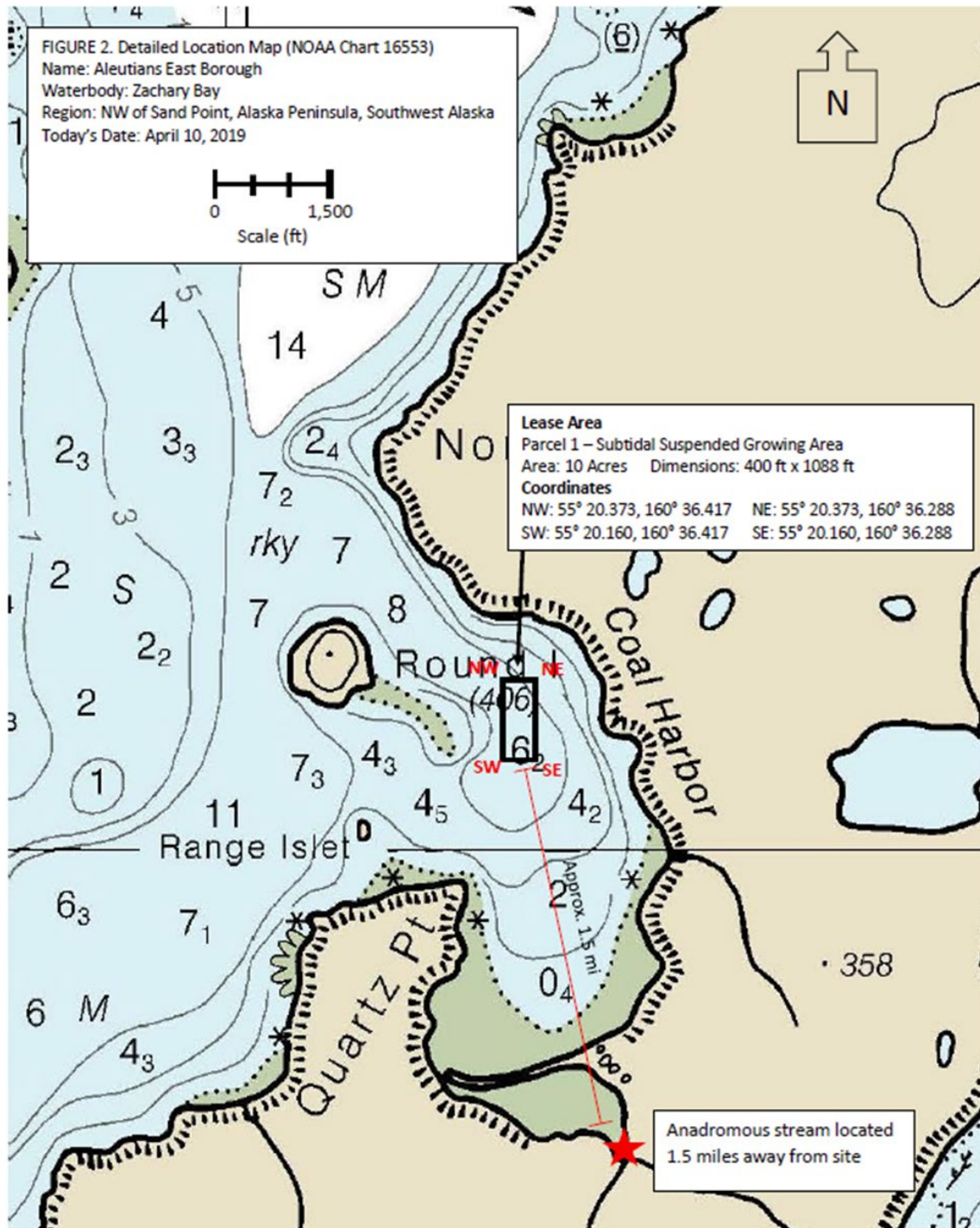
Storage Location

Equipment and gear will be clean and stored post-harvest at the Aleutians East Borough maintenance facility located in the city of Sand Point.

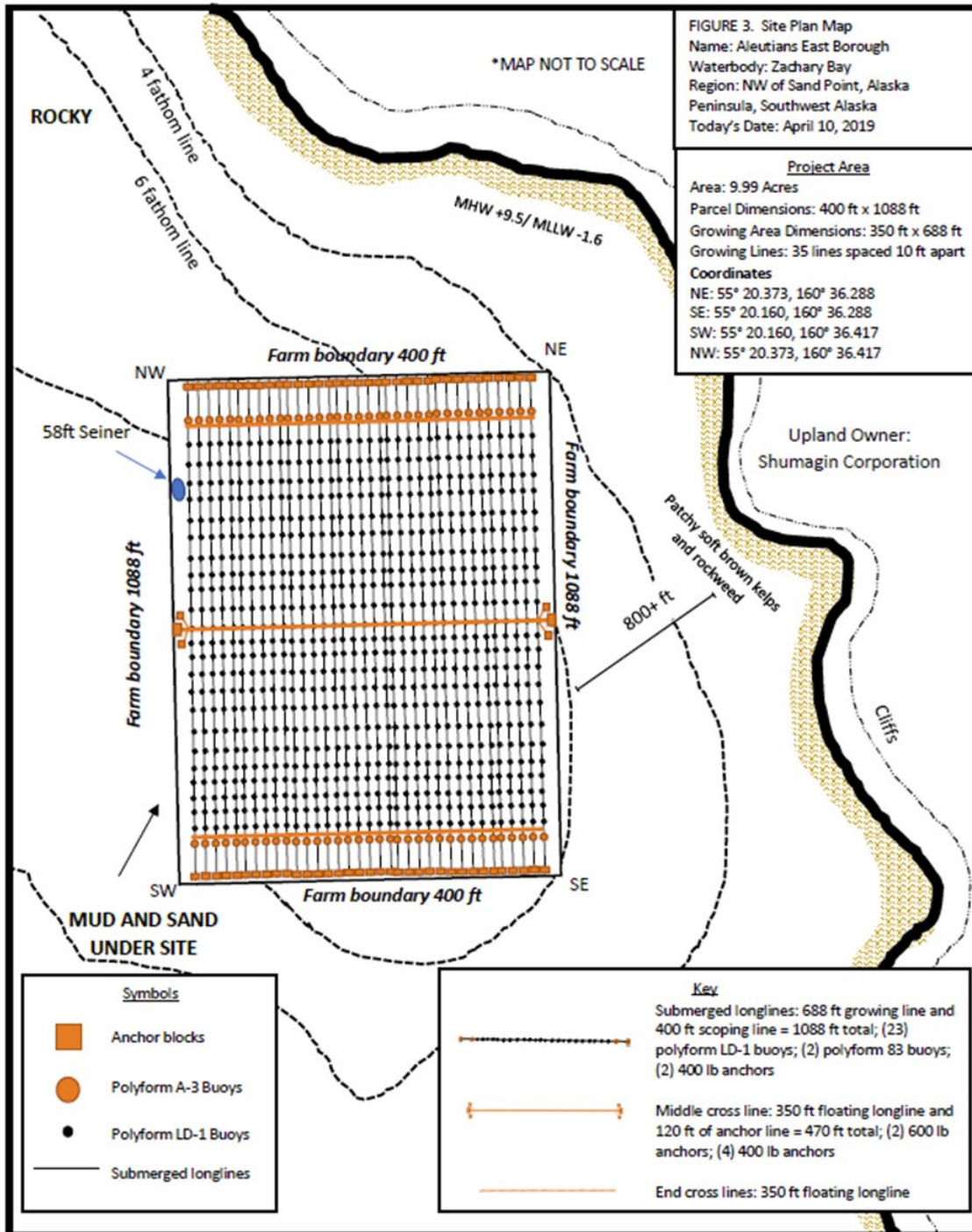
**Attachment B
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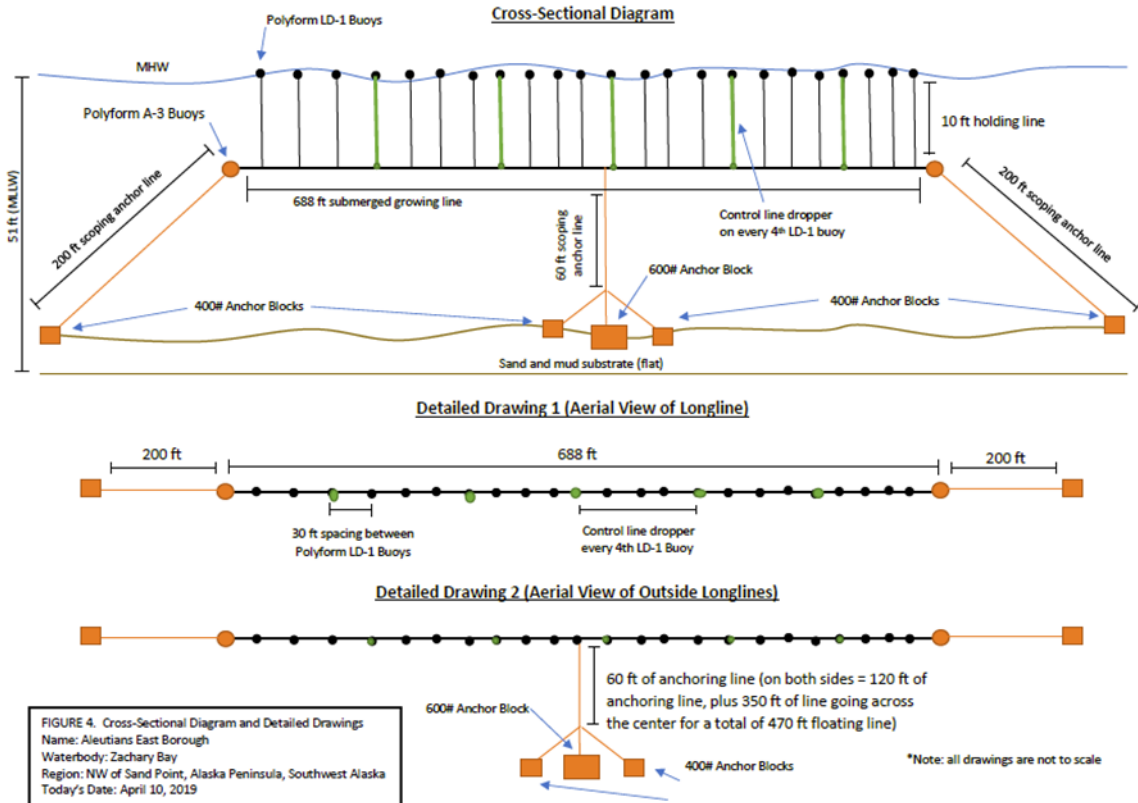
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Development Plan**



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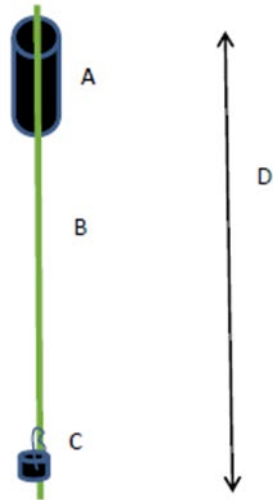


Attachment B Development Plan



**Attachment B
Development Plan**

Detailed Drawing 3 - Kelp depth control line dropper



- A. Polyform LD-1 buoy (8.6" x 19")
- B. 1 inch pvc pipe with a lobster spindle washer and figure 8 knot of 5/16 poly rope on each end
- C. 10 lb. cement weight from ½ gallon paint bucket with knotted 5/16 poly loop or 3-holed brick
- D. 10 ft length