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

ADL 108885 City and Borough of Juneau Public Utility Easement

THIS EASEMENT is granted this ______ day of ______, <u>20</u> by the STATE OF ALASKA, acting by and through the **Department of Natural Resources**, **Division of Mining, Land and Water**, Southeast Regional Land Office hereinafter referred to as the Grantor, whose address is 400 Willoughby Avenue/PO Box 111020, Juneau, AK 99811-1020. City and Borough of Juneau, whose address is 155 S SEWARD ST, JUNEAU, AK 99801 is hereinafter referred to as the Grantee.

WHEREAS, it is understood and agreed that, as a condition to the granting of said easement, this easement shall be used for no purpose other than to install and maintain a 10-inch HDPE pipe as a wastewater force main beneath the Mendenhall River, approximately 2700 feet south of Brotherhood Bridge over and across portions of the following described state lands:

Within the **CRM, T 40 S, R 65 E, Sec. 36 NE 1/4**, approximately 618 feet in length, with a width of 30 feet and containing approximately .42 acres, more or less.

IN accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, the grantor hereby reserves a Public Utility Easement over and across the above described state land within the JUNEAU RECORDING DISTRICT as shown on the Location Map identified as Attachment B revealing the easement location granted herein.

This easement shall be for so long as it is used for the purposes of a public sewer main, or when the Grantor determines that the easement is abandoned, is no longer

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necessary, is no longer in use for the purpose(s) authorized, or is revoked as a result of violations of the terms, conditions and stipulations of this easement.

The Grantee and entry persons who may exercise the rights and privileges granted by this document shall comply with all regulations now in effect or as hereafter established by the Division of Mining, Land & Water, all other federal, state or local laws, regulations or ordinances applicable to the area herein granted. In addition, the Grantee shall maintain the premise in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

In the event that the easement granted shall in any manner conflict with or overlap a previously granted easement the Grantor recognizes that the easement granted herein shall be used in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result from any claims, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or in connection with this easement.

NOW THEREFORE, in accordance with the provisions of AS 38.05.850 and the rules and regulations promulgated thereunder and in accordance with the conditions and stipulations of this easement including all documents that are incorporated by reference, the Grantee is authorized to operate and maintain said easement.

IN WITNESS WHEREOF, the Grantor has signed this easement on the day and year first above written.

[Signature Page Follows]

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES GRANTOR

Lee V. Cole, Jr., Southeast Regional Land Office Manager Division of Mining, Land and Water

STATE OF ALASKA

) ss. Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, <u>20</u>, before me personally appeared known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska

My Commission expires:

GRANTEE

STATE OF ALASK) ss.		
before me personal	THAT ON THIS ly appeared n and who executed sa	,	, 20, known by me to be knowledged voluntarily
Notary Public in and	for the State of Alaska	a	
My Commission exp	oires:		
FEE:	THIS IS OFFICIAL ST	ATE BUSINESS, NO) CHARGE
RETURN TO:	Lands Section, DMLW 400 Willoughby Avenu Juneau, AK 99811-102	ie/PO Box 111020	

Assignment: This authorization may not be transferred or assigned without the prior written consent of the AO.

Authorized Use: Improvements shall be consolidated within smallest practicable area, not to exceed the total acreage explicitly approved on page 1 of this authorization. Only those uses and temporary improvements depicted on Attachment A are allowed, unless prior Division approval is obtained for additional improvements. Use of the site for any unapproved purpose is prohibited. Grantee, its agents and employees are responsible for accurately siting authorized uses and structures within the authorization area. Any unauthorized use of State lands outside the authorization area, either by Grantee or by its agents or employees, is strictly prohibited.

Authorized Officer: The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) is the Southeast Regional Land Office Regional Manager or designee. The AO may be contacted at 400 Willoughby Avenue/PO Box 111020, Juneau, AK 99811-1020 or (907) 465-3400.

Alaska Historic Preservation Act: To amend or modify the uses allowed under this authorization, the Grantee shall submit a request in writing to the AO. Any amendment or modification must be approved by the AO and may require additional fees. Any purported amendment or modification has no legal effect until placed in writing and signed by both parties.

Valid Existing Rights: This authorization is subject to all valid existing rights in and to the land covered under this authorization. The State of Alaska makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number or nature of such valid existing rights.

Reservation of Rights: The DMLW reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land under this authorization. Authorized concurrent users of State land, their agents, employees, contractors, subcontractors, and licensees shall not interfere with the operation or maintenance activities of each user. The DMLW may require authorized concurrent users of State land to enter into an equitable agreement regarding concurrent use. The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary. Grantee will be notified in writing prior to the implementation of any change in the terms or conditions exercised by the AO under this provision. Grantee will be afforded the opportunity to review and comment regarding the effect of any proposed change to this authorization. Failure of the Grantee to notify the AO of any change to current officers or addresses shall not be sufficient grounds to invalidate the AO's compliance with this notification process.

Public Access: All operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no unreasonable interference with free public use of state lands and waters. Public access may not be restricted without prior approval of the AO. Neither the construction of this project nor the use of the proposed facility shall interfere with free public use of public roads, trails, waters or public access easements in the area of their activities.

Other Authorizations: The issuance of this authorization does not alleviate the necessity of the Grantee to obtain all other required authorizations for this activity. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.

Fine Tuning: Any changes in the alignment of the project area will require the prior written approval of the AO. The AO reserves the discretionary authority to require a redetermination of the State's interest for any significant proposed changes.

Development Plan/Plan of Operations: The development of the site authorized by this permit shall be limited to the area and improvements specified in the attached development plan/plan of operations dated May 2018 or subsequent modifications approved by the AO. The permittee is responsible for accurately siting development and operations within this area. Any proposed revisions to the development plan/plan of operations must be approved in writing by the AO before the change in use or development occurs.

Completion Report: A completion report shall be submitted within 30 days after the installation phase of the improvements is complete. The report shall contain the following information:

- a statement of restoration activities and methods of debris disposal;
- and, photographs of the permitted site taken before, during and after the proposed activity to document permit compliance. Photographs must consist of a series of aerial view or ground level view photos that clearly depict compliance with site cleanup and restoration guidelines. Failure to submit a satisfactory report subjects the site to a field inspection requirement for which the permittee may be assessed, at the AO's discretion, either the actual cost incurred by the DMLW or a minimum of \$100.00.

Site Maintenance: The area subject to this authorization shall be maintained in a neat, clean and safe condition, free of any solid waste, debris or litter.

Site Disturbance: Site disturbance shall be kept to a minimum to protect local habitats. All activities at the site shall be conducted in a manner that will minimize the disturbance of soil and vegetation and changes in the character of natural drainage systems. Brush clearing is allowed, but shall be kept to the minimum necessary to conduct or complete the authorized activity. Removal or destruction of the vegetative mat outside of the authorized area is not allowed. Establishment of, or improvements to, tidal, submerged, shoreland or riparian landing areas (e.g.: leveling the ground, bank cutting or removing or modifying a substantial amount of vegetation) is prohibited without the prior written consent of the AO. The Grantee shall conduct all operations in a manner which will prevent unwarranted pollution, erosion, and siltation. Any pollution, erosion, or siltation shall be repaired/remediated in a manner and time frame satisfactory to the AO at the Grantee's expense. Brush clearing is allowed, but should be kept to the minimum necessary. Removal or destruction of the vegetative mat is not authorized under this authorization.

Indemnification: Grantee assumes all responsibility, risk and liability for its activities and those of its employees, agents, contractors, subcontractors, licensees, or invitees, directly or indirectly related to this authorization, including environmental and hazardous substance risk and liability, whether accruing during or after the term of this authorization. Grantee shall defend, indemnify, and hold harmless the State of Alaska, its agents and employees, from and

against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Grantee, its employees, agents, contractors, subcontractors, licensees, or invitees, unless the proximate cause of the injury or damage is the sole negligence or willful misconduct of the State or a person acting on the State's behalf. Within 15 days, Grantee shall accept any such cause, action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.

Insurance: Pursuant to 11 AAC 96.065 the Grantee shall secure or purchase at its own expense, and maintain in force at all times during the term of this authorization, the following policies of insurance to protect both the Grantee and the Grantor (the State, its officers, agents and employees).

Commercial General Liability Insurance: Such policy shall have minimum coverage limits of \$1,000,000 combined single limit per occurrence.

If the Grantee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the AO prior to the issuance of this authorization and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. The Grantee must provide for a 60-day prior notice to the State before they cancel, not renew or make material changes to conditions to the policy. Failure to furnish satisfactory evidence of insurance, or lapse of the policy, are material breaches of this authorization and shall be grounds, at the option of the State, for termination of the authorization. All insurance policies shall comply with, and be issued by, insurers licensed to transact the business of insurance under Alaska Statute, Title 21. 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, Department of Administration. The State must be named as an additional named insured on the policy with respect to the operations of the Grantee on or in conjunction with the authorized premises, referred to as <u>ADL 108885</u>.

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

Performance Guaranty: As per 11 AAC 96.060 and AS 38.05.860, the Grantee is required to submit a bond to the Department as a certificate of deposit in the amount of \$8000.00 for a performance guaranty and survey deposit. The instrument may only be released in writing by the AO upon fulfillment of all stipulations and conditions of this authorization. In the event the Grantee fails to comply, all or part of the bond may be used to cover the State's costs to survey ADL 108885. Any application for modifications to ADL 108885 may require adjustment of the bond. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation. The AO reserves the right to require a performance guaranty in the event the Grantee's compliance is less than satisfactory or as a condition of authorizing significant changes in the development plan or operations. If required, such performance guaranty shall remain in effect until released, in writing, by the AO and shall secure performance of the Grantee's obligation hereunder. The amount of the performance guaranty may be adjusted by the AO in the event of approved

amendments to this authorization, changes in the development plan, or any change in the activities or operations conducted on the premises.

Survey: The Grantee shall submit a Record of Survey format As-built acceptable to the standards of the DMLW Survey Section within two years from the completion date of the installation authorized by ADL 108885. Please contact the DMLW Survey Section at 907-269-8523 to obtain survey instructions within 30 days of the execution of this Easement. A survey instruction fee may be required in accordance with 11 AAC 05.

Use Fees: A one-time fee of \$346.00 is required, based on \$0.56 per linear foot for a public utility easement.

