

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

ADL 233432  
Public Utility  
City of Emmonak water intake pipeline

This easement is granted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the State of Alaska, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, whose address is 550 W. 7<sup>th</sup> Ave, Suite 900C Anchorage, AK 99501 hereinafter referred to as the Grantor. This easement is granted to the City of Emmonak, whose address is P.O. Box 9, Emmonak, Alaska 99581, hereinafter referred to as the Grantee.

In accordance with the provisions of AS 38.05.850, and the rules and regulations promulgated thereunder, a public utility easement is hereby granted for an indefinite term for the operation and maintenance of a water intake pipeline. This easement is located near Emmonak, Alaska, over and across the following described state lands:

Within the SE ¼ of the NE ¼ of Section 18, and the NE ¼ of the SE ¼ of Section 18, Township 31N, Range 81W, Seward Meridian. The easement is 900 feet in length and 300 feet in width for a total area of approximately 6.2 acres. The easement is more particularly described as follows:

Commencing at the true point for the Southwest meander corner of Lot 15, Block 6 of U.S. Survey no. 4402, also the true point of beginning;

Thence South 4° 37' West a distance of 900 feet, to a point;

Including lands located 300 feet from the above described line on the bearing of North 85° 23' West.

The easement is shortened or extended to terminate at the mean high water line of Kwiguk Pass.

This easement is subject to the terms, conditions, and stipulations contained herein.

In the event that this easement shall in any manner conflict with or overlap a previously granted easement or right-of-way, the Grantee shall use this easement in a manner that will not interfere with the peaceful use and enjoyment of the previously issued easement or right-of-way. The



**GRANTEE**

\_\_\_\_\_  
Herman B. Hootch, Mayor  
City of Emmonak

STATE OF ALASKA            )  
  ) ss  
\_\_\_\_ Judicial District        )

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

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

WHEN RECORDED, RETURN DOCUMENT TO:  
Department of Natural Resources  
Division of Mining, Land and Water  
550 W. 7<sup>th</sup> Ave, Suite 900C  
Anchorage, AK 99501-3557

## STIPULATIONS

1. **Authorized Officer:** 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. **Change of Contact Information:** The Grantee shall maintain current contact information with the AO. Any change of contact information must be submitted in writing to the AO.
3. **Valid Existing Rights:** This authorization is subject to all valid existing rights and reservations in and to the authorized area. The State makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number, or nature of such valid existing rights.
4. **Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.
5. **Inspections:** The AO shall have reasonable access to the authorized area for inspection, which may be conducted without prior notice. If the Grantee is found to be in noncompliance, the authorized area may be subject to reinspection. The Grantee may be charged for actual expenses of any inspection.
6. **Public Access:** The construction, operation, use, and maintenance of the authorized area shall not interfere with public use of roads, trails, waters, landing areas, and public access easements. The ability to use or access state land or public waters may not be restricted in any manner. However, if a specific activity poses a safety concern, the AO may allow the restriction of public access for a specific period of time. The Grantee is required to contact the AO in advance for approval. No restriction is allowed unless specifically authorized in writing by the AO.
7. **Public Trust Doctrine:** 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 authorization is subject to the principles of the Public Trust Doctrine regarding navigable or public waters. The AO reserves the right to grant other interests consistent with the Public Trust Doctrine.
8. **Alaska Historic Preservation Act:** 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 written approval from the DNR Commissioner. Should any sites be discovered, the Grantee shall cease any activities that may cause damage and immediately contact the AO and the Office of History and Archaeology in the Division of Parks and Recreation.
9. **Compliance with Government Requirements:** The Grantee shall, at its expense, comply with all federal, state, and local laws, regulations, and ordinances directly or indirectly related

to this authorization. The Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.

- 10. Incurred Expenses:** The Grantor shall in no way be held liable for expenses incurred by the Grantee connected with the activities directly or indirectly related to this authorization.
- 11. Waiver of Forbearance:** Any failure on the part of the AO to enforce the terms of this authorization, or the waiver of any right under this authorization by the Grantee, unless in writing, shall not discharge or invalidate the authorization of such terms. No forbearance or written waiver affects the right of the AO to enforce any terms in the event of any subsequent violations of terms of this authorization.
- 12. Severability Clause:** If any clause or provision of this authorization is, in a final judicial proceeding, determined illegal, invalid, or unenforceable under present or future laws, then the Grantor and the Grantee agree that the remainder of this authorization will not be affected, and in lieu of each clause or provision of this authorization that is illegal, invalid, or unenforceable, there will be added as a part of this authorization 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.
- 13. Assignment:** In the event the Grantee desires to transfer their interest in the authorization to another party, the Grantee shall submit to the AO a request for assignment and a copy of a draft agreement which identifies the provisions of the assignment between the parties. The AO reserves the right to amend the terms or conditions of this authorization prior to approving any assignment, or to withhold approval for the assignment. The AO reserves the right to require an assignment between the Grantee and another party in the event of a change in corporate ownership, LLC/LLP membership or name change involving the authorized site.
- 14. Indemnification:** In connection with the entry on or use of these lands, subject to the limitations and provision of AS 09.50.250-270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the State, its agents and its employees from any and all claims or actions for injuries sustained by any person or property arising directly or indirectly from the construction of the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the State's negligence.
- 15. Fuel and Hazardous Substances:** No fuel or hazardous substances may be stored in the authorized area without prior written approval from the AO.
- 16. Insurance:** Insurance is not required. The AO reserves the right to require insurance during the term of this authorization. If required, insurance of a type and in an amount acceptable to the AO, must be provided and remain in place during the term of this authorization. The type and amount of insurance may be adjusted to reflect updates and changes in the associated project.

- 17. Removal of Improvements and Site Restoration:** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area.
- 18. Performance Guaranty:** A performance guaranty is not required. The AO reserves the right to require a performance guaranty during the term of this authorization. If required, a performance guaranty, in an amount acceptable to the AO, must be provided and remain in place during the term of this authorization. The guaranty may be adjusted to reflect updates and changes in the associated project. The guaranty assures compliance with the terms and conditions of the authorization. The guaranty may be utilized by the DMLW, at the discretion of the AO, to cover costs incurred by the State of Alaska to pay for any necessary corrective action(s) in the event the Grantee does not comply with site utilization and restoration guidelines. The provisions of this authorization shall not prejudice the State's right to obtain remedy under any law or regulation.
- 19. Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, nonpayment of fees, or upon failure to comply with any other applicable laws, statutes, and regulations. A revocation may not become effective until 60 days after the Grantee has been notified in writing of the violation during which time the Grantee has an opportunity to cure any such violation. No public access easement may be terminated without the prior written approval of DMLW.
- 20. Notification of Discharge:** The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge during normal business hours must be made to the nearest DEC Area Response Team: Anchorage (907) 269-7500, fax (907) 269-7687; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-5245. For discharges in state off shore waters call (907) 269-0667. The DEC oil spill report number outside normal business hours is (800) 478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email [dnr.scro.spill@alaska.gov](mailto:dnr.scro.spill@alaska.gov), (907) 269-8503; Fairbanks email

dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email sero@alaska.gov, (907) 465-3400. The Grantee shall supply the AO with all incident reports submitted to DEC.

- 21. Returned Check Penalty:** A returned check penalty of \$50.00 will be charged for any check on which the bank refuses payment. Late payment penalties shall continue to accrue.
- 22. Late Payment Penalty Charges:** The Grantee shall pay a fee for any late payment. The amount is the greater of either \$50.00 or interest accrued daily at the rate of 10.5% per annum and will be assessed on each past-due payment until paid in full.
- 23. Fees:** Land use fees for this authorization are waived in accordance with 11 AAC 05.020 (b).
- 24. Request for Information:** The AO, at any time, may require the Grantee to provide any information directly or indirectly related to this authorization in a manner prescribed by the AO.
- 25. Post Construction Reporting:** A report shall be submitted to the AO by December 15 in any year wherein construction activities occurred that describes the changes made to improvements within the easement during the preceding year. The report shall include photos of all portions of the easement and infrastructure therein that were the focus of construction activities that would be readily accessible to DMLW personnel during a site inspection.
- 26. Waste Disposal:** On-site refuse disposal is prohibited unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this authorization shall be removed and disposed of at an off-site DEC approved disposal facility. Waste, in this paragraph, means all discarded matter, including but not limited to human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and discarded equipment.
- 27. Destruction of Markers:** The Grantee shall protect all survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, and unsurveyed corner posts against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 28. Site Maintenance:** The authorized area shall be maintained in a neat, clean, and safe condition, free of any solid waste, debris, or litter, except as specifically authorized herein.
- 29. Maintenance of Improvements:** The Grantor is not responsible for maintenance of authorized improvements or liable for injuries or damages related to those improvements. No action or inaction of the Grantor is to be construed as assumption of responsibility.
- 30. Amendment or Modification:** The Grantee may request an amendment or modification of this authorization; the Grantee's request must be in writing. Any amendment or modification must be approved by the AO in advance and may require additional fees and changes to the terms of this authorization.

- 31. Development Plan:** Development shall be limited to the authorized area and improvements specified in the approved development plan or subsequent modifications approved by the AO. The Grantee is responsible for accurately siting development and operations within the authorized area. Any proposed revisions to the development plan must be approved in writing by the AO before the change in use or development occurs.
- 32. Proper Location:** This authorization is for activities on state lands or interests managed by DMLW. It does not authorize any activities on private, federal, native, and municipal lands, or lands which are owned or solely managed by other offices and agencies of the State. The Grantee is responsible for proper location within the authorized area.
- 33. Choice of Venue:** This authorization shall be construed under the laws of the State of Alaska. The Grantee confers personal jurisdiction on the courts of the State of Alaska for any litigation under this authorization.
- 34. Stop Work Orders:** Stop Work Orders may be issued if there is a deviation from design criteria, project specifications, stipulations, state statutes, or state regulations and that deviation is causing or is likely to cause significant damage to state resources. Under a Stop Work Order, work at the area subject to the Stop Work Order may not resume until the deviation is cured and corrective action is taken. Corrective action may include halting or avoiding specific conduct, implementing alternative measures, repairing any damage to state resources that may have resulted from the conduct, or other action as determined by the AO. The AO has the right but not the obligation, to undertake corrective action at the expense of the Grantee by moving against the performance bond when such action is necessitated by neglect or inaction on the part of the Grantee to take corrective action.
- 35. Survey:** The grantee shall supply DMLW with any survey data it holds or acquires that pertains to the location of water collection and treatment improvements installed on State owned, DMLW managed lands within or outside of this easement.
- 36. Fire Prevention, Protection and Liability:** The Grantee shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to state land and structures resulting from the negligent use of fire. The State is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire, call 911 or 1-800-237-3633.