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

Statewide Abatement of Impaired Land (SAIL) Section

Preliminary Decision
ADL 422279
United States Air Force
Restricted Use Authorization
AS 38.05.035 & AS 38.05.020

This Preliminary Decision (PD) is the State's preliminary best interest finding regarding a proposed disposal of interest in state land. The public is invited to comment on this Preliminary Decision (PD). The deadline for commenting is **5:00 pm May 14, 2024**. Please see the Public Notice section of this decision for requirements related to submitting comments for consideration.

Requested Action

The United States Air Force (USAF) submitted a request to the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW) for consent to interim Activity and Use Limitations (AULs), or Institutional Controls (ICs) that include land use controls (LUCs) and DNR's signature on an Environmental Covenant (EC)(Attachment A) associated with state-owned DMLW-managed land in perpetuity unless it is amended or terminated in compliance with AS 46.04.325 and AS 46.04.330 and signed by DNR and Alaska Department of Environmental Conservation (DEC). USAF also requests access to the DMLW-managed land covered by the EC for inspection and maintenance of the LUCs. The purpose of the request is to protect human health and the environment by prohibiting the use of and exposure to contaminated groundwater until the Final Record of Decision (ROD) is signed.

The site is located adjacent to the northern boundary of Eielson Air Force Base (EAFB), approximately 21 miles southeast of Fairbanks, and 7 miles southeast of the City of North Pole. The State of Alaska holds fee title to portions of the land and mineral estates within the established DNR Critical Water Management Area (CWMA). The parcels are within the Fairbanks Meridian, Township 2 South, Range 3 East section 21, 22, and 28. The boundary for the CWMA and relevant state-owned parcels are included as Attachment B.

Proposed Action

DNR proposes to provide consent to interim AULs via signature on an EC for the contaminated site parcels located on DMLW-managed land. DNR also proposes to issue a Restricted Use Authorization (RUA) (Attachment C) to the USAF for implementing, maintaining, monitoring, and reporting of AULs on the site in accordance with the Moose Creek Land Use Controls Implementation Plan (LUCIP). The Moose Creek LUCIP developed by the USAF with input from DEC, EPA, and DNR is included as Attachment D.

Scope of Decision
The scope of this decision is to determine if it is in the State's best interest to issue a RUA, sign an EC, and consent to AULs. The administrative review for this authorization is defined by AS 38.05.035(e)(1) – (2) and limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) any issues that are material to the determination.

Authority
This RUA is being adjudicated pursuant to AS 38.05.020, Authority and duties of the commissioner; AS 38.05.035, Powers and duties of the director; AS 38.05.945, Notice. The authority to execute the Final Finding and Decision (FFD), and the EC has not been delegated and, if issued, will be signed by the DNR Commissioner.

Administrative Record
The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the Eastern Tanana Area Plan and other classification references described herein, and the casefile for the application serialized by DNR as ADL 422279. Also incorporated by reference are DNR's potentially hazardous site file ADL 421303, DNR file PRJ 421304, DNR Department Order #153- Critical Water Management Area Designation, Community of Moose Creek, DEC file 107.38.150 (Hazard ID 26773) for the Eielson Air Force Base Basewide PFAS plume, and the United States Air Force Eielson Air Force Base, Alaska Interim Record of Decision (IROD) for Community of Moose Creek, Alaska, Long-Term Water Supply Final June 2019[1].

Location Information

Geographic Location:
The community of Moose Creek is in the Tanana River Valley along the river's northern bank on a low, relatively flat, floodplain terrace approximately two miles from the active river channel. The area is characterized by discontinuous permafrost; therefore, permafrost may be present in the subsurface. Data regarding the distribution of permafrost within the community is limited and what is available is biased to the shallow subsurface, between 40 and 100 feet below ground level.

Legal Description:
Township 2 South, Range 3 East, Fairbanks Meridian, Alaska
Section 21: N1/2NE1/4, SE1/4NE1/4, E1/2W1/2NE1/4NW1/4, E1/2NE1/4NW1/4

[1] United States Air Force Eielson Air Force Base, Alaska Interim Record of Decision for Community of Moose Creek, Alaska, Long-Term Water Supply Final June 2019

Excluding N1/2N1/2N1/2NE1/4, N1/2NE1/4NE1/4NW1/4, NE1/4NW1/4NE1/4NW1/4 as conveyed by Quitclaim Deed recorded in Book 458 Page 496, Fairbanks Recording District on December 6, 1985.
Containing 122.5 Acres More or Less

Section 21: SW1/4NE1/4, SE1/4
Excluding SW1/4NW1/4NW1/4SE1/4, SW1/4NW1/4SE1/4, N1/2NW1/4SW1/4SE1/4, SW1/4NW1/4SW1/4SE1/4, W1/2SW1/4SW1/4SE1/4 as conveyed by Corrective Deed and Declaration of Taking Bk 1244 Pg 887, Fairbanks Recording District, March 19, 2001.
Containing 175 Acres More or Less

Section 22: W1/2SE1/4, SW1/4, W1/2NE1/4, NW1/4
Excluding N1/2NW1/4NW1/4NW1/4 and NW1/4NE1/4NW1/4NW1/4 conveyed by Quitclaim Deed recorded at Book 458 Page 496 Fairbanks Recording District, December 6, 1985.
Containing 472.5 Acres More or Less

Section 28: N1/2NE1/4
Excluding W1/2W1/2W1/2NW1/4NW1/4NE1/4 and W1/2SW1/4NW1/4NE1/4 as conveyed by Corrective Deed & Declaration of Taking Recorded at Bk 1244 Pg 0887 Fairbanks Recording District
Containing 73.5 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

Municipality:
Located within the Fairbanks North Star Borough, though no borough lands are impacted.

Regional/Village Corporation:
Located within the Doyon Limited region. No corporation lands are involved.

State Navigability Determination:
It is undetermined if the State of Alaska owns the submerged lands of Garrison Slough within the CWMA.

Title
The State of Alaska holds fee title to the subject land under U. S. Patent No. 50-81-0172 dated September 18, 1981, and Patent 1232752 dated September 10, 1963. There are no other

reservations within the proposed RUA besides the standard reservations for ditches, canals, railroads, telegraph and telephone lines, and water rights.

Adjacent Landowners
Parcels to the north and west have been conveyed for the Chena River Flood Control Project (ADL 4000028 and ADL 407832) to the Army Corps of Engineers. Parcels to east are federal, ANILCA Topfiled (GS 3653) and state selected. This includes the military use area called the husky drop zone. The southern end of the east boundary borders an industrial parcel that is privately owned. The south boundary is described as the Alice Ann Subdivision and Ramsay Property and includes private, commercial, and industrial parcels. The industrial parcel is the Crowley Tank Facility. The commercial property includes two lots, one is listed as vacant and the other is the former NRC Alaska-Organic Incinerator Technology, Inc. (OIT, Inc), US Ecology, Inc., Republic Services property. Private parcels include two vacant lots, one multi-family, and one assembled.

See the Public Notice section for a list of landowners who will be mailed Public Notice of this PD and the map in Attachment E.

Third Party Interests

Alyeska Pipeline Service Company, Trans-Alaska Pipeline System (TAPS) (ADL 63574) pipeline right-of-way.

Golden Valley Electrical Association (ADL 22691) public easement.

U.S. Army Tank Trail Road, private easement (ADL 20421).

Planning and Classification
The subject parcel is located within the Eastern Tanana Area Plan (ETAP). The site is located within the Fairbanks Region, and within classification unit F-87 (ETAP p. 3-53).

The management intent is to protect and maintain wildlife and habitat values and retain in state ownership. Development is inappropriate in this unit except for certain types of utilities, communication facilities, roads, and similar types of projects that provide a general public benefit. Other types of projects may be authorized but only if they are determined to be in the best interest of the state and maintain the values and resources of the unit. ETAP states the unit is characterized by a mix of shrub, wetland, and evergreen and deciduous forest and lies within a moose wintering, rutting, and calving habitat area; waterfowl and brown bear are also present. The unit borders a flood control area situated to the west, which has been conveyed to the federal government for the purposes of flood control (ADL 400028).

The overall management goals for the unit are to protect watersheds that supply community drinking water, and to protect water quality to support domestic uses, fish and wildlife production, and recreational activities. As stated in the ETAP, DNR will place a higher priority on protecting public use values in stream corridors than on providing opportunities for private ownership or development of land. The requested RUA will enable USAF to implement the AULs required and is in line with the management goals of the ETAP to protect human health and the environment by prohibiting the use of and exposure to contaminated groundwater.

Access

Physical and legal access to the state-owned parcels of this RUA is by way of Mills Lane. Access is also available via Golden Valley Electric Association (GVEA) public easement ADL 22691. Access along the northern boundary of sections 21 and 22 is through U.S. Army private easement ADL 20421. This easement is for a tank trail road, but the public may use it as long as there is no interference with military use. Access throughout the more remote, undeveloped parts of the parcels would require off-trail foot travel.

Access Along Navigable and Public Waters

Section 28 includes the confluence of Garrison Slough and Moose Creek. The northern portion of section 27 and northeast section of section 28 include portions of Moose Creek which is not navigable or public waters. For this reason, the proposed RUA does not require reservation of public access along navigable and public waters pursuant to AS 38.05.126(a).

Public Trust Doctrine

The Public Trust doctrine does not apply to the proposed RUA because the site is not near a navigable waterway.

Reservation of Mineral Estate

In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the state, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.

Mineral Orders

Mineral closing orders, where established, close an area to new exploration and development of locatable minerals. Such mineral orders do not apply to leasable minerals (such as oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources.

Mineral Closing Order 397 closes locatable mineral entry to all state and state selected land

within sections 21 and 22 for the Chena River Flood Control. Mineral Order 1147 closes all state lands within 300 feet each side of the pipeline for the Trans-Alaska Pipeline System (TAPS). Mineral estate management, in general requires areas to be closed to mineral entry prior to land disposals [selling of state land] to minimize potential conflict between land and mineral estate users. There is no proposed mineral closing order for this area, however all activities must adhere to the restrictions described in the proposed AULs of the EC and the CWMA.

Agency Review

An agency review was conducted on February 27, 2024. The deadline for agency comments was March 26, 2024. The deadline was extended to April 4, 2024, by request.

The following agencies were included in the review:

- Dept. Natural Resources (DNR), Division of Mining, Land, & Water (DMLW) Northern Region;
- DNR, DMLW, Mineral Property Management;
- DNR, DMLW, Resource Assessment & Development (RADS);
- DNR, DMLW, Water Section;
- DNR, DMLW, Public Access Assertion & Defense (PAAD);
- DNR, State Pipeline Coordinator's Section (SPCS);
- Department of Administration, Division of Risk Management;
- Office of History and Archaeology (OHA);
- Department of Environmental Conservation (ADEC), Commissioners Office;
- ADEC Contaminated Sites Program;
- ADEC Drinking Water Program;
- Department of Fish & Game (ADF&G), Habitat Division;
- ADF&G, Access Defense;

Agency Review Comment and Response

DNR, DMLW-PAAD responded with no comments on this project. DNR, DMLW-RADS reviewed and has no objections to the request for a restricted use authorization. ADF&G Access Defense Program also responded with no objections.

Comment Received

The State Pipeline Coordinator's Section (SPCS) commented that this decision includes the Trans-Alaska Pipeline System (TAPS) which may need maintenance in the future. In this area the pipeline system is underground therefore dewatering may need to occur during maintenance activities. SPCS notes that conditions in any proposed restrictions should allow for TAPS

required maintenance activities. SPCS has asked for coordination on how to accommodate necessary pipeline activities safely and feasibly.

DNR Response

The proposed AULs restricted the use of groundwater. Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior DEC approval of exemption from the AULs. DNR SAIL will facilitate coordination between SPCS and DEC on how to obtain that exemption for any pipeline maintenance activities that may need to occur.

Background

Per- and polyfluoroalkyl substances (PFAS) are a group of synthetic fluorinated chemicals used in many industrial and consumer products. Two compounds (perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA)) are components of aqueous film-forming foam (AFFF) used by military, commercial, and industrial entities to control petroleum-fueled fires. The Department of Defense began using the foam in the 1970s, including at EAFB. Releases of AFFF to the environment have occurred during fire training, equipment maintenance, and storage at EAFB. Private wells in the community of Moose Creek exceeding the concentration of 70 parts per trillion (ppt) for the sum of PFOS and PFOA in drinking water were decommissioned and connected to municipal water within the CWMA. This 70-ppt level is based on a Lifetime Health Advisory (LHA) for drinking water for humans issued by the Environmental Protection Agency (EPA) in 2016. In June of 2022 EPA published interim health advisories for PFOA and PFOS and in March of 2023 EPA release a proposed national primary drinking water regulation for PFOA and PFOS, as well as four additional PFAS and their mixtures[2]. On April 10, 2024, EPA announced the final National Primary Drinking Water Regulation for six PFAS, this establishes legally enforceable levels called Maximum Contaminant Levels (MCLs).

[2] https://www.epa.gov/system/files/documents/2022-06/technical-factsheet-four-PFAS.pdf

National Primary Drinking Water Regulations[3]

Chemical	Maximum Contaminant Level Goal (MCLG)	Maximum Contaminant Level (MCL) (enforceable levels)
PFOA	Zero	4.0 parts per trillion (ppt)
PFOS	Zero	4.0 ppt
Perfluorononanoic acid (PFNA)	10 ppt	10 ppt
Perfluorohexane sulfonic acid (PFHxS)	10 ppt	10 ppt
Hexafluoropropylene oxide dimer acid (HFPO-DA) (commonly referred to as GenX Chemicals)	10 ppt	10 ppt
Mixture of two or more: PFNA, PFHxS, HFPO-DA, and Perfluorobutane sulfonate (PFBS)	1.0 (unitless) Hazard Index	1.0 (unitless) Hazard Index
Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety and are non-enforceable public health goals. **Maximum Contaminant Level (MCL):** The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards. **Hazard Index (HI):** The Hazard Index is a long-established approach that EPA regularly uses to understand health risk from a chemical mixture (i.e., exposure to multiple chemicals). The HI is made up of a sum of fractions. Each fraction compares the level of each PFAS measured in the water to the health-based water concentration.		

PFAS is a class of emerging contaminants, which means they have been identified as being a potential environmental or public health risk and the effects continue to be studied. PFAS is very persistent in the environment and has the potential to accumulate in exposed animals. The USAF began a remedial investigation (RI) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) at EAFB and surrounding off-base areas in 2021 to identify potential source areas, map the extent of the PFAS plume, and to assess potential PFAS risks to human health and the environment.

[3] https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas

For additional information on the RI effort by the USAF please visit the US Air Force Civil Engineer Center Administrative Record at https://ar.afcec-cloud.af.mil/ by searching for records under "Eielson Air Force Base, Alaska".

The USAF Interim Record of Decision (IROD) is limited to addressing the alternative drinking water supply to the community of Moose Creek, land use controls to prohibit the use of contaminated groundwater, and the establishment of environmental covenants on all impacted properties. Remediation of the contaminated groundwater and evaluating surface water will be addressed in the Final Record of Decision (ROD). The IROD is the required short-term protection while a final remedial solution is developed. If additional AULs are proposed in the ROD DNR will contemplate those restrictions in a separate publicly noticed decision and amend any existing environmental covenants, as warranted.

Critical Water Management area (CWMA)

The Moose Creek CWMA (also called CWMA 3) is a DNR Commissioner designation[4] that established restrictions on the future use of groundwater and surface water from within the defined area to protect public health, safety, and welfare in response to PFAS in the waters of the community of Moose Creek. The CWMA also restricts future water appropriations and applications for water rights within the community of Moose Creek. The Moose Creek CWMA was designated by Department Order on May 24, 2021 (see Appendix C within Attachment D).

Discussion

It is in the best interest of the state to provide written consent to the proposed AULs and implement an EC under UECA restricting access and use of groundwater thereby eliminating risk to humans and the environment.

The EC and AULs are necessary due to PFAS contamination migrating from EAFB via groundwater. Water quality monitoring performed by USAF has established that the subject waterbodies have been contaminated with PFAS, which consists of PFOS and PFOA. Within the CWMA boundaries, PFOS and PFOA are present at levels above the EPA's enforceable levels. The use of the contaminated water would likely negatively affect human health, spread contamination, and threaten the public interest. According to DEC's database as of March 2024 there are 301 environmental covenants already established on private, city, borough, and business owned parcels within the CWMA. AULs will be maintained for groundwater use until regulatory health advisory levels for PFOS and PFOA are achieved. The EC can be amended or terminated in compliance with AS 46.04.325 and AS 46.04.330.

[4] CWMAs are established by Department Order. See 11 AAC 93.500 to 11 AAC 93.540.

The CWMA has been established to legally restrict the use of groundwater, restrict the acceptance of new water rights and temporary water use authorizations, and quantifies all water use amounts as "significant use". The EC and AULs add additional protections by preventing the installation of new water wells within the CWMA designated zone. The USAF will monitor compliance with the requirements of the CWMA, and submit an annual report to DNR and DEC. The USAF will refer instances of non-compliance to DNR for enforcement actions pursuant to state law.

This RUA and EC will not restrict the access or use of the state parcels, such as lease, occupation, or conveyance of for commercial, resource development, or other purposes that are compatible with the EC and CWMA. Use of the state parcels by the general public is likewise not prohibited so long as such use is compatible with the EC and CWMA. Currently, the state-owned parcels within the CWMA are undeveloped land except for the utility easements and TAPS corridor. Most of the land is categorized as wetlands.

The following are the proposed AULs:

A. Restricted Access and Use of Groundwater - Except as required as part of an EPA, DEC, or USAF approved response activity, any drilling, boring, or other construction or use of a well for the purpose of extracting water for any purpose other than groundwater quality monitoring or groundwater remediation, including but not limited to, domestic, potable, or industrial uses, is prohibited on the Property.

B. Restricted Use of Groundwater - Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior DEC approval of exemption from this Activity and Use Limitation, and may be subject to treatment, monitoring, or disposal requirements including obtaining any applicable permits.

C. Remedial Measures and Equipment Preservation - Except as specifically authorized in writing by DEC, all uses and development of the Property shall preserve the integrity of any remedial measures, remedial equipment, and groundwater monitoring wells or systems.

USAF will conduct field inspections of the state-owned parcels annually, at a minimum, as determined by the IROD and LUCIP. These inspections will be used to accomplish the following:

A. Confirm that no undocumented construction or ground disturbing activities or changes in land use or groundwater use have occurred at the LUC sites in violation of

the applicable controls that are in place; and

B. ascertain whether the current land and groundwater uses in the areas are consistent with the IROD, the terms of the CWMA order, and land use restrictions contained in any EC that has been recorded for the property.

Field checklists can be found in Attachment D - Appendix G: Inspection Book.

Performance Guaranty
A performance guaranty is intended to incentivize performance of the conditions of the entry authorization and RUA and provide a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the RUA. Per 11 AAC 96.060, the requirements for a performance guaranty can be waived after considering the applicant's history of compliance and potential risks to the State. DMLW reserves the right to require a performance guaranty during the terms of either the entry authorization and/or the final RUA. As the site assessment process is being done under the federal program CERCLA, and the applicant is a branch of the federal government, the current potential risk of noncompliance or site abandonment is considered low, and a performance guaranty is not required at this time.

Insurance
Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

Per 11 AAC 96.065, the requirements for insurance can be waived. The Department of Defense is self-insured, and requirements for additional insurance are hereby waived.

Survey
This RUA does not require a survey. However, the State of Alaska reserves the right to require one in the future, should the need arise due to changes in statutes or increased use of the area.

Fees
Under 11 AAC 05.020(b), fees are waived for other federal, state, or municipal agencies. DMLW has determined that no fees or appraisal will be required.

Public Notice
Pursuant to AS 38.05.945, this PD will be advertised for a 30-day public comment period, starting on **April 15, 2024**. In addition, the post office located near the proposed RUA will be requested to post the notice pursuant to AS 38.05.945(b)(3)(C). The notice will also be posted on the State of Alaska Online Public Notice website pursuant to AS 38.05.945(b)(3)(B) located at: https://aws.state.ak.us/OnlinePublicNotices/.

In accordance with AS 38.05.946, a municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after the receipt of the notice.

The public is invited to comment on this PD. All comments received during the public comment period will be considered in the FFD. A copy of the FFD, along with instructions on filing for reconsideration, will be sent to all persons who comment on the PD. If public comments result in significant changes to the PD, additional public notice may be given.

To be eligible for reconsideration, a person affected by the FFD must provide written comments during the public comment period per AS 38.05.035(i).

Public Notice will also be mailed to landowners in the vicinity of the proposed RUA, as shown in Attachment E, including:

- PO BOX 60610 Fairbanks, AK 99706, industrial landowner; and
- PO BOX 55878 North Pole, AK 99705, commercial landowner; and
- PO BOX 70195 Fairbanks, AK 99709, industrial landowner; and
- 3389 Osage St. North Pole, AK 99705, private landowner.

Written comments about this project must be received in this office no later than 5:00 PM on May 14, 2024 to be considered.

To submit comments please choose one of the following methods:

Mail: Department of Natural Resources
DMLW SAIL Section
ATTN: Alyssa Millard
3700 Airport Way
Fairbanks, AK 99709

Email: alyssa.millard@alaska.gov

Signature page follows:

Recommendation:
Based on the information provided by the applicant and other agencies, as well as review of planning documents, statutes, and regulations, I recommend issuing this RUA to the applicant and DNR signature on an EC which consents to USAF's implementation of AULs as described in the Moose Creek LUCIP.

I recommend proceeding to public notice for the purpose of providing the members of the public and those entities identified in AS 38.05.945 an opportunity to review and submit comments.

Alyssa Millard 4/12/2024

Alyssa Millard, Natural Resource Manager 1 DATE
Statewide Abatement of Impaired Land Section,
Division of Mining, Land and Water

Preliminary Decision:
It is the determination of the Division of Mining, Land and Water that it may be in the State's best interest to issue a RUA to the applicant, as described above. This application shall now proceed to public notice.

Aaron Timian 4/12/2024

Aaron Timian, Acting Section Chief DATE
Statewide Abatement of Impaired Land Section,
Division of Mining, Land and Water

Attachments
Attachment A-Draft Environmental Covenant
Attachment B-Location Map
Attachment C-Draft Restricted Use Authorization (RUA)
Attachment D-Moose Creek Land Use Controls Implementation Plan (LUCIP)
Attachment E-Adjacent Landowners and Third-Party Interests Map

Attachment A
Draft Environmental Covenant

(FAIRBANKS RECORDING DISTRICT)
ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS

This Environmental Covenant and Consent of Access ("**Environmental Covenant**") is made this ___day of _____, 20__, by the State of Alaksa, Department of Natural Resources ("**ADNR**"), whose address is 3700 Airport Way Fairbanks AK 99709, as both Grantor and Holder/Grantee as further identified in paragraph 2 below, pursuant to the Uniform Environmental Covenants Act, AS 46.04.300 – 46.04.390 ("**UECA**") for the purpose of subjecting the Property (as defined below) to the Activity and Use Limitations described herein.

1. **Property.** ADNR, as Grantor, is the owner (on behalf of the State of Alaska)[1] of certain real property subject to this Environmental Covenant (the "**Property**"). The Property is located at

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 28: N1/2NE1/4
Excluding W1/2W1/2W1/2NW1/4NW1/4NE1/4 and W1/2SW1/4NW1/4NE1/4 as conveyed by Corrective Deed & Declaration of Taking Recorded at Bk 1244 Pg 0887 Fairbanks Recording District
Containing 73.5 Acres More or Less

According to the Plat, approved by the Bureau of Land Management in Washington DC on May 28, 1958, and as depicted and described in Appendix A.

The Property exists within a Critical Water Management Area ("**CWMA**") established by ADNR. Use restrictions described in this Environmental Covenant are in addition to, and do not supersede, the restrictions on water use described in the CWMA.

2. **Holder (and Grantee for the purposes of indexing).** ADNR is a Holder ("**Holder**") (and Grantee for the purposes of indexing pursuant to AS 46.04.320(a) of UECA), of this Environmental Covenant as that term is defined in AS 46.04.300(b).

3. **Environmental Response Project and Administrative Record.**

A. This Environmental Covenant is a component of an environmental response project as defined in AS 46.04.300(a) and .390(3) of UECA.

B. The Property is a parcel within the environmental response project for the community of Moose Creek, Alaska where a response action is being performed by the United States Air Force ("**USAF**") pursuant to Sections 104 and 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

[1] The term "owner," when applied to ADNR in this document, refers to ADNR in its State land management capacity as described in AS 38.05.035.

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("**CERCLA**"), 42 U.S.C. §§ 9604 and 9620. The Activity and Use Limitations are required as part of the environmental response project to prohibit the use of, and protect against exposure to, contaminated groundwater and have been approved by the USAF, the United States Environmental Protection Agency ("**USEPA**"), and the State of Alaska Department of Environmental Conservation ("**ADEC**").

C. ADNR agrees to cooperate fully with ADEC, USEPA, and the USAF in the implementation, operation, and maintenance of all CERCLA response actions on the Property, recognizing that USAF, consistent with CERCLA and any interim and final Records of Decision, will be responsible to undertake all such response actions. USAF's responsibilities are described in the Land Use Control Implementation Plan ("LUICP").

D. The Administrative Record for the environmental response project that impacts the Property may be accessed online at https://ar.afcec-cloud.af.mil/ under the installation name Eielson Air Force Base, AK; and the release/cleanup are documented in the ADEC contaminated sites database at https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search/ under Hazard ID number 26773.

4. Grant of Covenant. Covenant Runs with the Land. As Grantor, ADNR creates this Environmental Covenant pursuant to UECA so that the Activity and Use Limitations, Rights of Access, and other affirmative obligations and conditions set forth herein shall "run with the land" in accordance with AS 46.04.310(a) and shall be binding on ADNR, its successors and assigns, and on all present and subsequent owners, and current and future occupants, lessees or other persons holding or acquiring an interest in the Property.

5. Activity and Use Limitations. The following Activity and Use Limitations apply to the Property:

A. Restricted Access and Use of Groundwater – Except as required as part of a USEPA, ADEC, or USAF approved response activity, any drilling, boring, or other construction or use of a well for the purpose of extracting water for any purpose other than groundwater quality monitoring or groundwater remediation, including but not limited to, domestic, potable, or industrial uses, is prohibited on the Property.

B. Restricted Use of Groundwater – Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior ADEC approval of exemption from this Activity and Use Limitation, and may be subject to treatment, monitoring, or disposal requirements including obtaining any applicable permits.

C. Remedial Measures and Equipment Preservation – Except as specifically authorized in writing by ADEC, all uses and development of the Property shall preserve the integrity of any remedial measures, remedial equipment, and groundwater monitoring wells or systems.

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6. <u>Consent of Access</u>. ADNR hereby consents to officers, employees, contractors, and authorized representatives of ADEC, USEPA and the USAF entering and having continued access at reasonable times to the Property for the following purposes:

A. Implementing, operating and maintaining the environmental response project referenced in paragraph 3 above;

B. Monitoring and conducting periodic reviews of the environmental response project referenced in paragraph 3 above, including without limitation, sampling of air, water, groundwater, sediments and soils;

C. Verifying any data or information submitted to USEPA, ADEC, or the USAF; and

D. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, the environmental response project referenced in paragraph 3 above, or of any federal or state environmental laws or regulations.

Nothing in this Environmental Covenant shall limit or otherwise affect USEPA, ADEC and the USAF's right of entry and access or USEPA's, ADEC's and the USAF's authority to take response actions under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §§ 300 – 399), or other federal and state law.

7. <u>Reserved Rights of Grantor</u>.

A. Subject to any additional restrictions described in any future deed of conveyance, easement, right-of-way agreement, lease, permit, or assignment, ADNR, as Grantor, hereby reserves unto itself, its assigns, lessees and occupants, all rights and privileges in and to the use of the Property that are not incompatible with the Activity and Use Limitations identified herein and that are not incompatible with the CWMA.

B. Nothing in this Environmental Covenant shall affect ADNR's authority under AS 46.15 to regulate the ground and surface waters of the State associated with the Property.

8. <u>No Prohibition Against Compatible Use</u>. This Environmental Covenant shall not be deemed to prohibit the lease, occupation, or conveyance of the Property for commercial, resource development, recreational, or other purposes that are compatible with this Environmental Covenant.

9. <u>Future Conveyances, Notice and Reservation</u>.

A. ADNR shall include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and land use permits, a notice and reservation which is in substantially the following form:

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NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS DATED, 20__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20____, IN BOOK _____, PAGE _____, OF THE _____ RECORDING DISTRICT [(S) REPEAT AS NECESSARY], ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLE BY THE STATE OF ALASKA, THE USAF AND USEPA.

ADDITIONALLY, THE PROPERTY SUBJECT TO THIS ENVIRONMENTAL COVENANT FALLS WITHIN A CRITICAL WATER MANAGEMENT AREA ESTABLISHED BY THE STATE, DATED APRIL 9, 2021, RECORDED IN THE PUBLIC LAND RECORDS ON AUGUST 4, 2023, DOCUMENT NUMBER 2023-009275-0 FAIRBANKS RECORDING DISTRICT, ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLEBY THE STATE OF ALASKA.

B. ADNR and any subsequent owner shall provide written notice to ADEC, USEPA, and the USAF within 30 days prior to any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the intended new owner in fee, and the portion of the Property to be conveyed to that owner.

C. ADNR shall notify ADEC at least 45 days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property; or any proposed land use changes or applications for building permits that are inconsistent with the provisions herein.

10. Reporting.

ADNR and any subsequent owner shall report to ADEC every five (5) years to document the status of compliance with the Activity and Use Limitations required by this Environmental Covenant. Such reports and any other communications shall be transmitted to ADEC via the email address or mailing address listed at paragraph 14.

11. Enforcement and Compliance.

A. Enforcement. The Department and other parties, including parties to the Environmental Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Environmental Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use authority granted by AS 46.04.

B. Other Authorities Not Affected. No Waiver of Enforcement. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the rights established, or to be established, under the CWMA. Nothing in this Environmental Covenant affects USEPA, ADEC, or the USAF's authority to

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take or require performance of response actions to address releases or threatened releases of hazardous substances, pollutants, or contaminants at or from the Property, or to enforce a consent order, consent decree, or other settlement agreement entered into by USEPA, ADEC, or the USAF. Enforcement of the terms of this Environmental Covenant shall be at the discretion of the parties authorized to enforce; and any forbearance, delay or omission to exercise its rights under this Environmental Covenant in the event of a breach of any term of this Environmental Covenant shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights of a party.

C. Former Owners and Interest Holders Subject to Enforcement. Unless otherwise required by law, a fee owner, or other person that holds any right, title or interest in or to the Property remains subject to enforcement with respect to any violation of this Environmental Covenant by the owner or other person which occurred during the time when the owner or other person was bound by this Environmental Covenant regardless of whether the owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

12. No Waiver of Environmental Covenant. This Environmental Covenant may not be waived, extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine as set forth in AS 46.04.325(f).

13. Representations and Warranties. ADNR hereby represents and warrants that, at the time of execution of this Environmental Covenant, ADNR lawfully manages, controls, and holds title to the Property on behalf of the State, and that ADNR has a good and lawful right and power to bind the Property as provided in this Environmental Covenant.

14. Notices. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to another party shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To State of Alaska, Department of Environmental
Conservation Division of Spill Prevention and Response:

CS.Submittals@alaska.gov
or
Institutional Controls Unit
Contaminated Sites Program
Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811-1800

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To U.S. Environmental Protection Agency:

Director, Superfund and Emergency Management Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

To United States Air Force:

Attn: Environmental Restoration Project Manager, AFCEC/
CZOP 10471 20th Street, Suite 345
JBER, AK 99506

15. Recording and Notice of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant. An Environmental Covenant must be recorded in the Fairbanks Recorder's Office, Department of Natural Resources, State of Alaska. Within 30 days after ADEC signs and delivers this Environmental Covenant to Grantor, Grantor shall record this Environmental Covenant in the Recorder's Office, Department of Natural Resources, State of Alaska.

B. Termination, Amendment or Modification. This Environmental Covenant may be terminated, amended or modified if the termination, amendment or modification complies with AS 46.04.325 and AS 46.04.330, and conforms with the restrictions imposed by the CWMA. Written notice of any proposed termination, amendment or modification shall be provided to USEPA and USAF. Within 30 days after ADEC signs and delivers to the owner in fee any termination, amendment or modification of this Environmental Covenant, the owner shall record the notice of termination, amendment or modification of this Environmental Covenant in the recorder's office of the Borough in which the Property is located.

C. Providing Notice of Covenant, Termination, Amendment or Modification. Within 30 days after recording this Environmental Covenant, Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

i. ADEC;

ii. USEPA;

iii. USAF;

iv. each person with a current recorded interest in the Property; and

v. each political subdivision in which the Property is located.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the owner in fee shall transmit a copy of the document in recorded form to the persons listed in items i-v above.

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16. General Provisions.

A. Controlling law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Alaska and the United States of America. Any disputes concerning this Environmental Covenant shall be adjudicated in Alaska.

B. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Environmental Covenant shall be liberally construed in favor of the establishment of Activity and Use Limitations that run with the land to affect the purpose of this Environmental Covenant and the policy and purpose of the environmental response project and its authorizing laws. If any provision of this Environmental Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

D. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

E. Captions. The captions in this Environmental Covenant have been inserted solely for convenience of reference and are not a part of this Environmental Covenant and shall have no effect upon construction or interpretation.

17. Effective Date. This Environmental Covenant is effective on the date of recording in the public lands record.

18. List of Appendices:

Appendix A – Legal Description and Map of the Property

[Signature Pages to follow]

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All Property Owners must complete and sign a separate signature page in front of a Notary Public.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

By: _____(signature)

Name of signer: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____.

_____(signat
ure) Notary Public

My Commissioner Expires _____

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If you are submitting the Environmental Covenant on behalf of an organization, complete and sign this page in front of a Notary Public.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

FOR THE GRANTOR:

Organization: _____(print)

By:
_____(signat
ure) Name: _____(print)
Title: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____

on behalf of

_____

_____
(signature) Notary Public

My Commissioner Expires _____

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FOR THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By_____(signature)

Director of the Division of Spill Prevention and Response
Department of Environmental Conservation

State of Alaska)
)SS.
Borough of Juneau)

This instrument was acknowledged before me on _____, 20_, by [ ], the Director of Spill Prevention and Response for the Department of Environmental Conservation, a state agency, on behalf of the State of Alaska.

_____
(signature) Notary Public
My Commission Expire

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Appendix A
Legal Description and Map of the Property

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 28: N1/2NE1/4
Excluding W1/2W1/2W1/2NW1/4NW1/4NE1/4 and W1/2SW1/4NW1/4NE1/4 as conveyed by Corrective Deed & Declaration of Taking Recorded at Bk 1244 Pg 0887 Fairbanks Recording District
Containing 73.5 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

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Moose Creek
Moose Creek
Moose Creek
ontana Cir
Montana Cir
Rivers St
Pam Ave
Osage St
Richardson Hwy
Garrison Slough
Putnam Ln
Old Richardson Hwy
Hope St
Go Thatta Way
Garrison Slough
Hope St
Da Niece St
Richardson Hwy
N
0
0.3
0.6
1.2 Miles

(FAIRBANKS RECORDING DISTRICT)
ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS

This Environmental Covenant and Consent of Access ("**Environmental Covenant**") is made this __ day of _____, 20__, by the State of Alaksa, Department of Natural Resources ("**ADNR**"), whose address is 3700 Airport Way Fairbanks AK 99709, as both Grantor and Holder/Grantee as further identified in paragraph 2 below, pursuant to the Uniform Environmental Covenants Act, AS 46.04.300 – 46.04.390 ("**UECA**") for the purpose of subjecting the Property (as defined below) to the Activity and Use Limitations described herein.

1. <u>Property</u>. ADNR, as Grantor, is the owner (on behalf of the State of Alaska)[1] of certain real property subject to this Environmental Covenant (the "**Property**"). The Property is located at

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 21: N1/2NE1/4, SE1/4NE1/4, E1/2W1/2NE1/4NW1/4, E1/2NE1/4NW1/4
Excluding N1/2N1/2N1/2NE1/4, N1/2NE1/4NE1/4NW1/4, NE1/4NW1/4NE1/4NW1/4 as conveyed by Quitclaim Deed recorded in Book 458 Page 496, Fairbanks Recording District on December 6, 1985.
Containing 122.5 Acres More or Less

According to the Plat, approved by the Bureau of Land Management in Washington DC on May 28, 1958, and as depicted and described in Appendix A.

The Property exists within a Critical Water Management Area ("**CWMA**") established by ADNR. Use restrictions described in this Environmental Covenant are in addition to, and do not supersede, the restrictions on water use described in the CWMA.

2. <u>Holder (and Grantee for the purposes of indexing)</u>. ADNR is a Holder ("**Holder**") (and Grantee for the purposes of indexing pursuant to AS 46.04.320(a) of UECA), of this Environmental Covenant as that term is defined in AS 46.04.300(b).

3. <u>Environmental Response Project and Administrative Record.</u>

A. This Environmental Covenant is a component of an environmental response project as defined in AS 46.04.300(a) and .390(3) of UECA.

B. The Property is a parcel within the environmental response project for the community of Moose Creek, Alaska where a response action is being performed by the United States Air Force ("**USAF**") pursuant to Sections 104 and 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. §§ 9604 and 9620. The Activity and Use Limitations are required as part of the environmental response project to prohibit the use of, and protect against exposure to, contaminated groundwater

[1] The term "owner," when applied to ADNR in this document, refers to ADNR in its State land management capacity as described in AS 38.05.035.

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and have been approved by the USAF, the United States Environmental Protection Agency ("**USEPA**"), and the State of Alaska Department of Environmental Conservation ("**ADEC**").

C. ADNR agrees to cooperate fully with ADEC, USEPA, and the USAF in the implementation, operation, and maintenance of all CERCLA response actions on the Property, recognizing that USAF, consistent with CERCLA and any interim and final Records of Decision, will be responsible to undertake all such response actions. USAF's responsibilities are described in the Land Use Control Implementation Plan ("LUICP").

D. The Administrative Record for the environmental response project that impacts the Property may be accessed online at https://ar.afcec-cloud.af.mil/ under the installation name Eielson Air Force Base, AK; and the release/cleanup are documented in the ADEC contaminated sites database at https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search/ under Hazard ID number 26773.

4. Grant of Covenant. Covenant Runs with the Land. As Grantor, ADNR creates this Environmental Covenant pursuant to UECA so that the Activity and Use Limitations, Rights of Access, and other affirmative obligations and conditions set forth herein shall "run with the land" in accordance with AS 46.04.310(a) and shall be binding on ADNR, its successors and assigns, and on all present and subsequent owners, and current and future occupants, lessees or other persons holding or acquiring an interest in the Property.

5. Activity and Use Limitations. The following Activity and Use Limitations apply to the Property:

A. Restricted Access and Use of Groundwater – Except as required as part of a USEPA, ADEC, or USAF approved response activity, any drilling, boring, or other construction or use of a well for the purpose of extracting water for any purpose other than groundwater quality monitoring or groundwater remediation, including but not limited to, domestic, potable, or industrial uses, is prohibited on the Property.

B. Restricted Use of Groundwater – Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior ADEC approval of exemption from this Activity and Use Limitation, and may be subject to treatment, monitoring, or disposal requirements including obtaining any applicable permits.

C. Remedial Measures and Equipment Preservation – Except as specifically authorized in writing by ADEC, all uses and development of the Property shall preserve the integrity of any remedial measures, remedial equipment, and groundwater monitoring wells or systems.

6. Consent of Access. ADNR hereby consents to officers, employees, contractors, and authorized representatives of ADEC, USEPA and the USAF entering and having continued access at reasonable times to the Property for the following purposes:

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A. Implementing, operating and maintaining the environmental response project referenced in paragraph 3 above;

B. Monitoring and conducting periodic reviews of the environmental response project referenced in paragraph 3 above, including without limitation, sampling of air, water, groundwater, sediments and soils;

C. Verifying any data or information submitted to USEPA, ADEC, or the USAF; and

D. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, the environmental response project referenced in paragraph 3 above, or of any federal or state environmental laws or regulations.

Nothing in this Environmental Covenant shall limit or otherwise affect USEPA, ADEC and the USAF's right of entry and access or USEPA's, ADEC's and the USAF's authority to take response actions under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §§ 300 – 399), or other federal and state law.

7. <u>Reserved Rights of Grantor</u>.

A. Subject to any additional restrictions described in any future deed of conveyance, easement, right-of-way agreement, lease, permit, or assignment, ADNR, as Grantor, hereby reserves unto itself, its assigns, lessees and occupants, all rights and privileges in and to the use of the Property that are not incompatible with the Activity and Use Limitations identified herein and that are not incompatible with the CWMA.

B. Nothing in this Environmental Covenant shall affect ADNR's authority under AS 46.15 to regulate the ground and surface waters of the State associated with the Property.

8. <u>No Prohibition Against Compatible Use</u>. This Environmental Covenant shall not be deemed to prohibit the lease, occupation, or conveyance of the Property for commercial, resource development, recreational, or other purposes that are compatible with this Environmental Covenant.

9. <u>Future Conveyances, Notice and Reservation</u>.

A. ADNR shall include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and land use permits, a notice and reservation which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS DATED_____, 20__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20____, IN BOOK _____, PAGE _____, OF THE _____ RECORDING DISTRICT [(S) REPEAT AS NECESSARY], ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLE

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BY THE STATE OF ALASKA, THE USAF AND USEPA.

ADDITIONALLY, THE PROPERTY SUBJECT TO THIS ENVIRONMENTAL COVENANT FALLS WITHIN A CRITICAL WATER MANAGEMENT AREA ESTABLISHED BY THE STATE, DATED APRIL 9, 2021, RECORDED IN THE PUBLIC LAND RECORDS ON AUGUST 4, 2023, DOCUMENT NUMBER 2023-009275-0 FAIRBANKS RECORDING DISTRICT, ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLEBY THE STATE OF ALASKA.

B. ADNR and any subsequent owner shall provide written notice to ADEC, USEPA, and the USAF within 30 days prior to any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the intended new owner in fee, and the portion of the Property to be conveyed to that owner.

C. ADNR shall notify ADEC at least 45 days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property; or any proposed land use changes or applications for building permits that are inconsistent with the provisions herein.

10. Reporting.

ADNR and any subsequent owner shall report to ADEC every five (5) years to document the status of compliance with the Activity and Use Limitations required by this Environmental Covenant. Such reports and any other communications shall be transmitted to ADEC via the email address or mailing address listed at paragraph 14.

11. Enforcement and Compliance.

A. Enforcement. The Department and other parties, including parties to the Environmental Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Environmental Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use authority granted by AS 46.04.

B. Other Authorities Not Affected. No Waiver of Enforcement. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the rights established, or to be established, under the CWMA. Nothing in this Environmental Covenant affects USEPA, ADEC, or the USAF's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances, pollutants, or contaminants at or from the Property, or to enforce a consent order, consent decree, or other settlement agreement entered into by USEPA, ADEC, or the USAF. Enforcement of the terms of this Environmental Covenant shall be at the discretion of the parties authorized to enforce; and any forbearance, delay or omission to exercise its rights under this Environmental Covenant in the event of a breach of any term of this Environmental Covenant shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any

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other term, or of any of the rights of a party.

C. Former Owners and Interest Holders Subject to Enforcement. Unless otherwise required by law, a fee owner, or other person that holds any right, title or interest in or to the Property remains subject to enforcement with respect to any violation of this Environmental Covenant by the owner or other person which occurred during the time when the owner or other person was bound by this Environmental Covenant regardless of whether the owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

12. No Waiver of Environmental Covenant. This Environmental Covenant may not be waived, extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine as set forth in AS 46.04.325(f).

13. Representations and Warranties. ADNR hereby represents and warrants that, at the time of execution of this Environmental Covenant, ADNR lawfully manages, controls, and holds title to the Property on behalf of the State, and that ADNR has a good and lawful right and power to bind the Property as provided in this Environmental Covenant.

14. Notices. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to another party shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To State of Alaska, Department of Environmental Conservation
Division of Spill Prevention and Response:

CS.Submittals@alaska.gov
or
Institutional Controls Unit
Contaminated Sites Program
Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811-1800

To U.S. Environmental Protection Agency:

Director, Superfund and Emergency Management Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

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To United States Air Force:

Attn: Environmental Restoration Project Manager, AFCEC/
CZOP 10471 20th Street, Suite 345
JBER, AK 99506

15. Recording and Notice of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant. An Environmental Covenant must be recorded in the Fairbanks Recorder's Office, Department of Natural Resources, State of Alaska. Within 30 days after ADEC signs and delivers this Environmental Covenant to Grantor, Grantor shall record this Environmental Covenant in the Recorder's Office, Department of Natural Resources, State of Alaska.

B. Termination, Amendment or Modification. This Environmental Covenant may be terminated, amended or modified if the termination, amendment or modification complies with AS 46.04.325 and AS 46.04.330, and conforms with the restrictions imposed by the CWMA. Written notice of any proposed termination, amendment or modification shall be provided to USEPA and USAF. Within 30 days after ADEC signs and delivers to the owner in fee any termination, amendment or modification of this Environmental Covenant, the owner shall record the notice of termination, amendment or modification of this Environmental Covenant in the recorder's office of the Borough in which the Property is located.

C. Providing Notice of Covenant, Termination, Amendment or Modification. Within 30 days after recording this Environmental Covenant, Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

i. ADEC;

ii. USEPA;

iii. USAF;

iv. each person with a current recorded interest in the Property; and

v. each political subdivision in which the Property is located.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the owner in fee shall transmit a copy of the document in recorded form to the persons listed in items i-v above.

16. General Provisions.

A. Controlling law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Alaska and the United States of America. Any disputes concerning this Environmental Covenant shall be adjudicated in Alaska.

B. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Environmental Covenant shall be liberally construed in favor of the establishment of Activity and Use Limitations that run with the land to affect the purpose of this Environmental Covenant and the policy and purpose of the environmental response project and its

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authorizing laws. If any provision of this Environmental Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

D. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

E. Captions. The captions in this Environmental Covenant have been inserted solely for convenience of reference and are not a part of this Environmental Covenant and shall have no effect upon construction or interpretation.

17. Effective Date. This Environmental Covenant is effective on the date of recording in the public lands record.

18. List of Appendices:

Appendix A – Legal Description and Map of the Property

[Signature Pages to follow]

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All Property Owners must complete and sign a separate signature page in front of a Notary Public.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

By: _____(signature)

Name of signer: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____.

_____
(signature) Notary Public

My Commissioner Expires _____

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If you are submitting the Environmental Covenant on behalf of an organization, complete and sign this page in front of a Notary Public.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

FOR THE GRANTOR:

Organization: _____(print)

By: _____(signature)
Name: _____(print)
Title: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____

on behalf of _____

_____
(signature) Notary Public

My Commissioner Expires _____

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FOR THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By_____(signature)

Director of the Division of Spill Prevention and Response
Department of Environmental Conservation

State of Alaska)
)SS.
Borough of Juneau)

This instrument was acknowledged before me on _____, 20_, by [ ], the Director of Spill Prevention and Response for the Department of Environmental Conservation, a state agency, on behalf of the State of Alaska.

_____
(signature) Notary Public
My Commission Expire

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Appendix A
Legal Description and Map of the Property

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska
Section 21: N1/2NE1/4, SE1/4NE1/4, E1/2W1/2NE1/4NW1/4, E1/2NE1/4NW1/4
Excluding N1/2N1/2N1/2NE1/4, N1/2NE1/4NE1/4NW1/4, NE1/4NW1/4NE1/4NW1/4
as conveyed by Quitclaim Deed recorded in Book 458 Page 496, Fairbanks Recording District on December 6, 1985.
Containing 122.5 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

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Moose Creek Ave
son Hwy
Moose Creek
Bellwood St
Rivers St
Pam Ave
Osage St
Old Richardson Hwy
Garrison Slough
Putnam Ln
Hope St
Go Thatta Way
Richardson Hwy
Richardson Hwy
Richardson Hwy
Old Richardson Hwy
Adonis Ave
N
0
0.3
0.6
1.2 Miles
Maxar, Microsoft, State of Alaska, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

(FAIRBANKS RECORDING DISTRICT)
ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS

This Environmental Covenant and Consent of Access ("**Environmental Covenant**") is made this __ day of _____, 20__, by the State of Alaksa, Department of Natural Resources ("**ADNR**"), whose address is 3700 Airport Way Fairbanks AK 99709, as both Grantor and Holder/Grantee as further identified in paragraph 2 below, pursuant to the Uniform Environmental Covenants Act, AS 46.04.300 – 46.04.390 ("**UECA**") for the purpose of subjecting the Property (as defined below) to the Activity and Use Limitations described herein.

1. **Property.** ADNR, as Grantor, is the owner (on behalf of the State of Alaska)[1] of certain real property subject to this Environmental Covenant (the "**Property**"). The Property is located at

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 21: SW1/4NE1/4, SE1/4
Excluding SW1/4NW1/4NW1/4SE1/4, SW1/4NW1/4SE1/4, N1/2NW1/4SW1/4SE1/4, SW1/4NW1/4SW1/4SE1/4, W1/2SW1/4SW1/4SE1/4 as conveyed by Corrective Deed and Declaration of Taking Bk 1244 Pg 887, Fairbanks Recording District, March 19, 2001.
Containing 175 Acres More or Less

According to the Plat, approved by the Bureau of Land Management in Washington DC on May 28, 1958, and as depicted and described in Appendix A.

The Property exists within a Critical Water Management Area ("**CWMA**") established by ADNR. Use restrictions described in this Environmental Covenant are in addition to, and do not supersede, the restrictions on water use described in the CWMA.

2. **Holder (and Grantee for the purposes of indexing).** ADNR is a Holder ("**Holder**") (and Grantee for the purposes of indexing pursuant to AS 46.04.320(a) of UECA), of this Environmental Covenant as that term is defined in AS 46.04.300(b).

3. **Environmental Response Project and Administrative Record.**

A. This Environmental Covenant is a component of an environmental response project as defined in AS 46.04.300(a) and .390(3) of UECA.

B. The Property is a parcel within the environmental response project for the community of Moose Creek, Alaska where a response action is being performed by the United States Air Force ("**USAF**") pursuant to Sections 104 and 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. §§ 9604 and 9620. The Activity and Use Limitations are required as part of the environmental

[1] The term "owner," when applied to ADNR in this document, refers to ADNR in its State land management capacity as described in AS 38.05.035.

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response project to prohibit the use of, and protect against exposure to, contaminated groundwater and have been approved by the USAF, the United States Environmental Protection Agency ("**USEPA**"), and the State of Alaska Department of Environmental Conservation ("**ADEC**").

C. ADNR agrees to cooperate fully with ADEC, USEPA, and the USAF in the implementation, operation, and maintenance of all CERCLA response actions on the Property, recognizing that USAF, consistent with CERCLA and any interim and final Records of Decision, will be responsible to undertake all such response actions. USAF's responsibilities are described in the Land Use Control Implementation Plan ("LUICP").

D. The Administrative Record for the environmental response project that impacts the Property may be accessed online at https://ar.afcec-cloud.af.mil/ under the installation name Eielson Air Force Base, AK; and the release/cleanup are documented in the ADEC contaminated sites database at https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search/ under Hazard ID number 26773.

4. Grant of Covenant. Covenant Runs with the Land. As Grantor, ADNR creates this Environmental Covenant pursuant to UECA so that the Activity and Use Limitations, Rights of Access, and other affirmative obligations and conditions set forth herein shall "run with the land" in accordance with AS 46.04.310(a) and shall be binding on ADNR, its successors and assigns, and on all present and subsequent owners, and current and future occupants, lessees or other persons holding or acquiring an interest in the Property.

5. Activity and Use Limitations. The following Activity and Use Limitations apply to the Property:

A. Restricted Access and Use of Groundwater – Except as required as part of a USEPA, ADEC, or USAF approved response activity, any drilling, boring, or other construction or use of a well for the purpose of extracting water for any purpose other than groundwater quality monitoring or groundwater remediation, including but not limited to, domestic, potable, or industrial uses, is prohibited on the Property.

B. Restricted Use of Groundwater – Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior ADEC approval of exemption from this Activity and Use Limitation, and may be subject to treatment, monitoring, or disposal requirements including obtaining any applicable permits.

C. Remedial Measures and Equipment Preservation – Except as specifically authorized in writing by ADEC, all uses and development of the Property shall preserve the integrity of any remedial measures, remedial equipment, and groundwater monitoring wells or systems.

6. Consent of Access. ADNR hereby consents to officers, employees, contractors, and authorized representatives of ADEC, USEPA and the USAF entering and having continued access at reasonable times to the Property for the following purposes:

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A. Implementing, operating and maintaining the environmental response project referenced in paragraph 3 above;

B. Monitoring and conducting periodic reviews of the environmental response project referenced in paragraph 3 above, including without limitation, sampling of air, water, groundwater, sediments and soils;

C. Verifying any data or information submitted to USEPA, ADEC, or the USAF; and

D. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, the environmental response project referenced in paragraph 3 above, or of any federal or state environmental laws or regulations.

Nothing in this Environmental Covenant shall limit or otherwise affect USEPA, ADEC and the USAF's right of entry and access or USEPA's, ADEC's and the USAF's authority to take response actions under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §§ 300 – 399), or other federal and state law.

7. <u>Reserved Rights of Grantor</u>.

A. Subject to any additional restrictions described in any future deed of conveyance, easement, right-of-way agreement, lease, permit, or assignment, ADNR, as Grantor, hereby reserves unto itself, its assigns, lessees and occupants, all rights and privileges in and to the use of the Property that are not incompatible with the Activity and Use Limitations identified herein and that are not incompatible with the CWMA.

B. Nothing in this Environmental Covenant shall affect ADNR's authority under AS 46.15 to regulate the ground and surface waters of the State associated with the Property.

8. <u>No Prohibition Against Compatible Use</u>. This Environmental Covenant shall not be deemed to prohibit the lease, occupation, or conveyance of the Property for commercial, resource development, recreational, or other purposes that are compatible with this Environmental Covenant.

9. <u>Future Conveyances, Notice and Reservation</u>.

A. ADNR shall include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and land use permits, a notice and reservation which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS DATED_____, 20__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20____, IN BOOK _____, PAGE _____, OF THE _____ RECORDING DISTRICT [(S) REPEAT AS

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NECESSARY], ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLE BY THE STATE OF ALASKA, THE USAF AND USEPA.

ADDITIONALLY, THE PROPERTY SUBJECT TO THIS ENVIRONMENTAL COVENANT FALLS WITHIN A CRITICAL WATER MANAGEMENT AREA ESTABLISHED BY THE STATE, DATED APRIL 9, 2021, RECORDED IN THE PUBLIC LAND RECORDS ON AUGUST 4, 2023, DOCUMENT NUMBER 2023-009275-0 FAIRBANKS RECORDING DISTRICT, ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLEBY THE STATE OF ALASKA.

B. ADNR and any subsequent owner shall provide written notice to ADEC, USEPA, and the USAF within 30 days prior to any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the intended new owner in fee, and the portion of the Property to be conveyed to that owner.

C. ADNR shall notify ADEC at least 45 days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property; or any proposed land use changes or applications for building permits that are inconsistent with the provisions herein.

10. Reporting.

ADNR and any subsequent owner shall report to ADEC every five (5) years to document the status of compliance with the Activity and Use Limitations required by this Environmental Covenant. Such reports and any other communications shall be transmitted to ADEC via the email address or mailing address listed at paragraph 14.

11. Enforcement and Compliance.

A. Enforcement. The Department and other parties, including parties to the Environmental Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Environmental Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use authority granted by AS 46.04.

B. Other Authorities Not Affected. No Waiver of Enforcement. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the rights established, or to be established, under the CWMA. Nothing in this Environmental Covenant affects USEPA, ADEC, or the USAF's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances, pollutants, or contaminants at or from the Property, or to enforce a consent order, consent decree, or other settlement agreement entered into by USEPA, ADEC, or the USAF. Enforcement of the terms of this Environmental Covenant shall be at the discretion of the parties authorized to enforce; and any forbearance, delay or omission to exercise its rights under this Environmental Covenant in the event of a breach of any term of this Environmental Covenant

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shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights of a party.

C. Former Owners and Interest Holders Subject to Enforcement. Unless otherwise required by law, a fee owner, or other person that holds any right, title or interest in or to the Property remains subject to enforcement with respect to any violation of this Environmental Covenant by the owner or other person which occurred during the time when the owner or other person was bound by this Environmental Covenant regardless of whether the owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

12. No Waiver of Environmental Covenant. This Environmental Covenant may not be waived, extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine as set forth in AS 46.04.325(f).

13. Representations and Warranties. ADNR hereby represents and warrants that, at the time of execution of this Environmental Covenant, ADNR lawfully manages, controls, and holds title to the Property on behalf of the State, and that ADNR has a good and lawful right and power to bind the Property as provided in this Environmental Covenant.

14. Notices. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to another party shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To State of Alaska, Department of Environmental Conservation
Division of Spill Prevention and Response:

CS.Submittals@alaska.gov
or
Institutional Controls Unit
Contaminated Sites Program
Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811-1800

To U.S. Environmental Protection Agency:

Director, Superfund and Emergency Management Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

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To United States Air Force:

Attn: Environmental Restoration Project Manager, AFCEC/
CZOP 10471 20th Street, Suite 345
JBER, AK 99506

15. Recording and Notice of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant. An Environmental Covenant must be recorded in the Fairbanks Recorder's Office, Department of Natural Resources, State of Alaska. Within 30 days after ADEC signs and delivers this Environmental Covenant to Grantor, Grantor shall record this Environmental Covenant in the Recorder's Office, Department of Natural Resources, State of Alaska.

B. Termination, Amendment or Modification. This Environmental Covenant may be terminated, amended or modified if the termination, amendment or modification complies with AS 46.04.325 and AS 46.04.330, and conforms with the restrictions imposed by the CWMA. Written notice of any proposed termination, amendment or modification shall be provided to USEPA and USAF. Within 30 days after ADEC signs and delivers to the owner in fee any termination, amendment or modification of this Environmental Covenant, the owner shall record the notice of termination, amendment or modification of this Environmental Covenant in the recorder's office of the Borough in which the Property is located.

C. Providing Notice of Covenant, Termination, Amendment or Modification. Within 30 days after recording this Environmental Covenant, Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

i. ADEC;

ii. USEPA;

iii. USAF;

iv. each person with a current recorded interest in the Property; and

v. each political subdivision in which the Property is located.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the owner in fee shall transmit a copy of the document in recorded form to the persons listed in items i-v above.

16. General Provisions.

A. Controlling law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Alaska and the United States of America. Any disputes concerning this Environmental Covenant shall be adjudicated in Alaska.

B. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Environmental Covenant shall be liberally construed in favor of the establishment of Activity and Use Limitations that run with the land to affect the purpose of this

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Environmental Covenant and the policy and purpose of the environmental response project and its authorizing laws. If any provision of this Environmental Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

D. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

E. Captions. The captions in this Environmental Covenant have been inserted solely for convenience of reference and are not a part of this Environmental Covenant and shall have no effect upon construction or interpretation.

17. Effective Date. This Environmental Covenant is effective on the date of recording in the public lands record.

18. List of Appendices:

Appendix A – Legal Description and Map of the Property

[Signature Pages to follow]

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All Property Owners must complete and sign a separate signature page in front of a Notary Public.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

By: _____(signature)

Name of signer: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____.

_____
(signature) Notary Public

My Commissioner Expires _____

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If you are submitting the Environmental Covenant on behalf of an organization, complete and sign this page in front of a Notary Public.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

FOR THE GRANTOR:

Organization: _____(print)

By: _____(signature)
Name: _____(print)
Title: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____

on behalf of _____

_____
(signature) Notary Public

My Commissioner Expires _____

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FOR THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By_____(signature)

Director of the Division of Spill Prevention and Response
Department of Environmental Conservation

State of Alaska)
)SS.
Borough of Juneau)

This instrument was acknowledged before me on _____, 20_, by [ ], the Director of Spill Prevention and Response for the Department of Environmental Conservation, a state agency, on behalf of the State of Alaska.

_____
(signature) Notary Public
My Commission Expire

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Appendix A
Legal Description and Map of the Property

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 21: SW1/4NE1/4, SE1/4
Excluding SW1/4NW1/4NW1/4SE1/4, SW1/4NW1/4SE1/4, N1/2NW1/4SW1/4SE1/4, SW1/4NW1/4SW1/4SE1/4, W1/2SW1/4SW1/4SE1/4 as conveyed by Corrective Deed and Declaration of Taking Bk 1244 Pg 887, Fairbanks Recording District, March 19, 2001.
Containing 175 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

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Creek Ave
Moose Creek
Bellwood St
Rivers St
Pam Ave
Osage St
Old Richardson Hwy
Garrison Slough
Putnam Ln
Hope St
Go Thatta Way
Richardson Hwy
Richardson Hwy
Richardson Hwy
Old Richardson Hwy
Adonis Ave
Eielson Air Force Base
N
0
0.3
0.6
1.2 Miles
Maxar, Microsoft, State of Alaska, Esri, TomTom, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

(FAIRBANKS RECORDING DISTRICT)
ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS

This Environmental Covenant and Consent of Access ("**Environmental Covenant**") is made this __ day of _____, 20__, by the State of Alaksa, Department of Natural Resources ("**ADNR**"), whose address is 3700 Airport Way Fairbanks AK 99709, as both Grantor and Holder/Grantee as further identified in paragraph 2 below, pursuant to the Uniform Environmental Covenants Act, AS 46.04.300 – 46.04.390 ("**UECA**") for the purpose of subjecting the Property (as defined below) to the Activity and Use Limitations described herein.

1. **Property.** ADNR, as Grantor, is the owner (on behalf of the State of Alaska)[1] of certain real property subject to this Environmental Covenant (the "**Property**"). The Property is located at

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 22: W1/2SE1/4,SW1/4,W1/2NE1/4,NW1/4
Excluding N1/2NW1/4NW1/4NW1/4 and NW1/4NE1/4NW1/4NW1/4 conveyed by Quitclaim Deed recorded at Book 458 Page 496 Fairbanks Recording District, December 6, 1985.
Containing 472.5 Acres More or Less

According to the Plat, approved by the Bureau of Land Management in Washington DC on May 28, 1958, and as depicted and described in Appendix A.

The Property exists within a Critical Water Management Area ("**CWMA**") established by ADNR. Use restrictions described in this Environmental Covenant are in addition to, and do not supersede, the restrictions on water use described in the CWMA.

2. **Holder (and Grantee for the purposes of indexing).** ADNR is a Holder ("**Holder**") (and Grantee for the purposes of indexing pursuant to AS 46.04.320(a) of UECA), of this Environmental Covenant as that term is defined in AS 46.04.300(b).

3. **Environmental Response Project and Administrative Record.**

A. This Environmental Covenant is a component of an environmental response project as defined in AS 46.04.300(a) and .390(3) of UECA.

B. The Property is a parcel within the environmental response project for the community of Moose Creek, Alaska where a response action is being performed by the United States Air Force ("**USAF**") pursuant to Sections 104 and 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), 42 U.S.C. §§ 9604 and 9620. The Activity and Use Limitations are required as part of the environmental

[1] The term "owner," when applied to ADNR in this document, refers to ADNR in its State land management capacity as described in AS 38.05.035.

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response project to prohibit the use of, and protect against exposure to, contaminated groundwater and have been approved by the USAF, the United States Environmental Protection Agency ("**USEPA**"), and the State of Alaska Department of Environmental Conservation ("**ADEC**").

C. ADNR agrees to cooperate fully with ADEC, USEPA, and the USAF in the implementation, operation, and maintenance of all CERCLA response actions on the Property, recognizing that USAF, consistent with CERCLA and any interim and final Records of Decision, will be responsible to undertake all such response actions. USAF's responsibilities are described in the Land Use Control Implementation Plan ("LUICP").

D. The Administrative Record for the environmental response project that impacts the Property may be accessed online at https://ar.afcec-cloud.af.mil/ under the installation name Eielson Air Force Base, AK; and the release/cleanup are documented in the ADEC contaminated sites database at https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search/ under Hazard ID number 26773.

4. Grant of Covenant. Covenant Runs with the Land. As Grantor, ADNR creates this Environmental Covenant pursuant to UECA so that the Activity and Use Limitations, Rights of Access, and other affirmative obligations and conditions set forth herein shall "run with the land" in accordance with AS 46.04.310(a) and shall be binding on ADNR, its successors and assigns, and on all present and subsequent owners, and current and future occupants, lessees or other persons holding or acquiring an interest in the Property.

5. Activity and Use Limitations. The following Activity and Use Limitations apply to the Property:

A. Restricted Access and Use of Groundwater – Except as required as part of a USEPA, ADEC, or USAF approved response activity, any drilling, boring, or other construction or use of a well for the purpose of extracting water for any purpose other than groundwater quality monitoring or groundwater remediation, including but not limited to, domestic, potable, or industrial uses, is prohibited on the Property.

B. Restricted Use of Groundwater – Contaminated water may not be pumped, drained, dewatered, used for irrigation, dust control, or any other purpose on or off the site without prior ADEC approval of exemption from this Activity and Use Limitation, and may be subject to treatment, monitoring, or disposal requirements including obtaining any applicable permits.

C. Remedial Measures and Equipment Preservation – Except as specifically authorized in writing by ADEC, all uses and development of the Property shall preserve the integrity of any remedial measures, remedial equipment, and groundwater monitoring wells or systems.

6. Consent of Access. ADNR hereby consents to officers, employees, contractors, and authorized representatives of ADEC, USEPA and the USAF entering and having continued access at reasonable times to the Property for the following purposes:

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A. Implementing, operating and maintaining the environmental response project referenced in paragraph 3 above;

B. Monitoring and conducting periodic reviews of the environmental response project referenced in paragraph 3 above, including without limitation, sampling of air, water, groundwater, sediments and soils;

C. Verifying any data or information submitted to USEPA, ADEC, or the USAF; and

D. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, the environmental response project referenced in paragraph 3 above, or of any federal or state environmental laws or regulations.

Nothing in this Environmental Covenant shall limit or otherwise affect USEPA, ADEC and the USAF's right of entry and access or USEPA's, ADEC's and the USAF's authority to take response actions under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. §§ 300 – 399), or other federal and state law.

7. <u>Reserved Rights of Grantor</u>.

A. Subject to any additional restrictions described in any future deed of conveyance, easement, right-of-way agreement, lease, permit, or assignment, ADNR, as Grantor, hereby reserves unto itself, its assigns, lessees and occupants, all rights and privileges in and to the use of the Property that are not incompatible with the Activity and Use Limitations identified herein and that are not incompatible with the CWMA.

B. Nothing in this Environmental Covenant shall affect ADNR's authority under AS 46.15 to regulate the ground and surface waters of the State associated with the Property.

8. <u>No Prohibition Against Compatible Use</u>. This Environmental Covenant shall not be deemed to prohibit the lease, occupation, or conveyance of the Property for commercial, resource development, recreational, or other purposes that are compatible with this Environmental Covenant.

9. <u>Future Conveyances, Notice and Reservation</u>.

A. ADNR shall include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and land use permits, a notice and reservation which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT AND CONSENT OF ACCESS DATED_____, 20__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20____, IN BOOK _____, PAGE _____, OF THE _____ RECORDING DISTRICT [(S) REPEAT AS

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NECESSARY], ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLE BY THE STATE OF ALASKA, THE USAF AND USEPA.

ADDITIONALLY, THE PROPERTY SUBJECT TO THIS ENVIRONMENTAL COVENANT FALLS WITHIN A CRITICAL WATER MANAGEMENT AREA ESTABLISHED BY THE STATE, DATED APRIL 9, 2021, RECORDED IN THE PUBLIC LAND RECORDS ON AUGUST 4, 2023, DOCUMENT NUMBER 2023-009275-0 FAIRBANKS RECORDING DISTRICT, ALASKA, IN FAVOR OF HOLDER, AND ENFORCEABLEBY THE STATE OF ALASKA.

B. ADNR and any subsequent owner shall provide written notice to ADEC, USEPA, and the USAF within 30 days prior to any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the intended new owner in fee, and the portion of the Property to be conveyed to that owner.

C. ADNR shall notify ADEC at least 45 days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property; or any proposed land use changes or applications for building permits that are inconsistent with the provisions herein.

10. Reporting.

ADNR and any subsequent owner shall report to ADEC every five (5) years to document the status of compliance with the Activity and Use Limitations required by this Environmental Covenant. Such reports and any other communications shall be transmitted to ADEC via the email address or mailing address listed at paragraph 14.

11. Enforcement and Compliance.

A. Enforcement. The Department and other parties, including parties to the Environmental Covenant, described in AS 46.04.335 are empowered to administer and enforce the terms of this Environmental Covenant using civil authority granted to them in AS 46.03. In addition, the Department may use authority granted by AS 46.04.

B. Other Authorities Not Affected. No Waiver of Enforcement. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the rights established, or to be established, under the CWMA. Nothing in this Environmental Covenant affects USEPA, ADEC, or the USAF's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances, pollutants, or contaminants at or from the Property, or to enforce a consent order, consent decree, or other settlement agreement entered into by USEPA, ADEC, or the USAF. Enforcement of the terms of this Environmental Covenant shall be at the discretion of the parties authorized to enforce; and any forbearance, delay or omission to exercise its rights under this Environmental Covenant in the event of a breach of any term of this Environmental Covenant

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shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights of a party.

C. Former Owners and Interest Holders Subject to Enforcement. Unless otherwise required by law, a fee owner, or other person that holds any right, title or interest in or to the Property remains subject to enforcement with respect to any violation of this Environmental Covenant by the owner or other person which occurred during the time when the owner or other person was bound by this Environmental Covenant regardless of whether the owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

12. No Waiver of Environmental Covenant. This Environmental Covenant may not be waived, extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine as set forth in AS 46.04.325(f).

13. Representations and Warranties. ADNR hereby represents and warrants that, at the time of execution of this Environmental Covenant, ADNR lawfully manages, controls, and holds title to the Property on behalf of the State, and that ADNR has a good and lawful right and power to bind the Property as provided in this Environmental Covenant.

14. Notices. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to another party shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To State of Alaska, Department of Environmental Conservation
Division of Spill Prevention and Response:

CS.Submittals@alaska.gov
or
Institutional Controls Unit
Contaminated Sites Program
Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811-1800

To U.S. Environmental Protection Agency:

Director, Superfund and Emergency Management Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

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To United States Air Force:

Attn: Environmental Restoration Project Manager, AFCEC/
CZOP 10471 20th Street, Suite 345
JBER, AK 99506

15. Recording and Notice of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant. An Environmental Covenant must be recorded in the Fairbanks Recorder's Office, Department of Natural Resources, State of Alaska. Within 30 days after ADEC signs and delivers this Environmental Covenant to Grantor, Grantor shall record this Environmental Covenant in the Recorder's Office, Department of Natural Resources, State of Alaska.

B. Termination, Amendment or Modification. This Environmental Covenant may be terminated, amended or modified if the termination, amendment or modification complies with AS 46.04.325 and AS 46.04.330, and conforms with the restrictions imposed by the CWMA. Written notice of any proposed termination, amendment or modification shall be provided to USEPA and USAF. Within 30 days after ADEC signs and delivers to the owner in fee any termination, amendment or modification of this Environmental Covenant, the owner shall record the notice of termination, amendment or modification of this Environmental Covenant in the recorder's office of the Borough in which the Property is located.

C. Providing Notice of Covenant, Termination, Amendment or Modification. Within 30 days after recording this Environmental Covenant, Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

i. ADEC;

ii. USEPA;

iii. USAF;

iv. each person with a current recorded interest in the Property; and

v. each political subdivision in which the Property is located.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the owner in fee shall transmit a copy of the document in recorded form to the persons listed in items i-v above.

16. General Provisions.

A. Controlling law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Alaska and the United States of America. Any disputes concerning this Environmental Covenant shall be adjudicated in Alaska.

B. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Environmental Covenant shall be liberally construed in favor of the establishment of Activity and Use Limitations that run with the land to affect the purpose of this

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Environmental Covenant and the policy and purpose of the environmental response project and its authorizing laws. If any provision of this Environmental Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

D. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

E. Captions. The captions in this Environmental Covenant have been inserted solely for convenience of reference and are not a part of this Environmental Covenant and shall have no effect upon construction or interpretation.

17. Effective Date. This Environmental Covenant is effective on the date of recording in the public lands record.

18. List of Appendices:

Appendix A – Legal Description and Map of the Property

[Signature Pages to follow]

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All Property Owners must complete and sign a separate signature page in front of a Notary Public.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

By: _____(signature)

Name of signer: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____.

_____
(signature) Notary Public

My Commissioner Expires _____

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If you are submitting the Environmental Covenant on behalf of an organization, complete and sign this page in front of a Notary Public.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

FOR THE GRANTOR:

Organization: _____(print)

By: _____(signature)
Name: _____(print)
Title: _____(print)

State of Alaska)
) SS.
Borough of Fairbanks North Star)

On _____, 20 _____, this instrument was acknowledged before me by,

_____

on behalf of _____

_____
(signature) Notary Public

My Commissioner Expires _____

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FOR THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By_____(signature)

Director of the Division of Spill Prevention and Response
Department of Environmental Conservation

State of Alaska)
)SS.
Borough of Juneau)

This instrument was acknowledged before me on _____, 20_, by [ ], the Director of Spill Prevention and Response for the Department of Environmental Conservation, a state agency, on behalf of the State of Alaska.

_____
(signature) Notary Public
My Commission Expire

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Appendix A
Legal Description and Map of the Property

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska

Section 22: W1/2SE1/4,SW1/4,W1/2NE1/4,NW1/4
Excluding N1/2NW1/4NW1/4NW1/4 and NW1/4NE1/4NW1/4NW1/4 conveyed by Quitclaim Deed recorded at Book 458 Page 496 Fairbanks Recording District, December 6, 1985.
Containing 472.5 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

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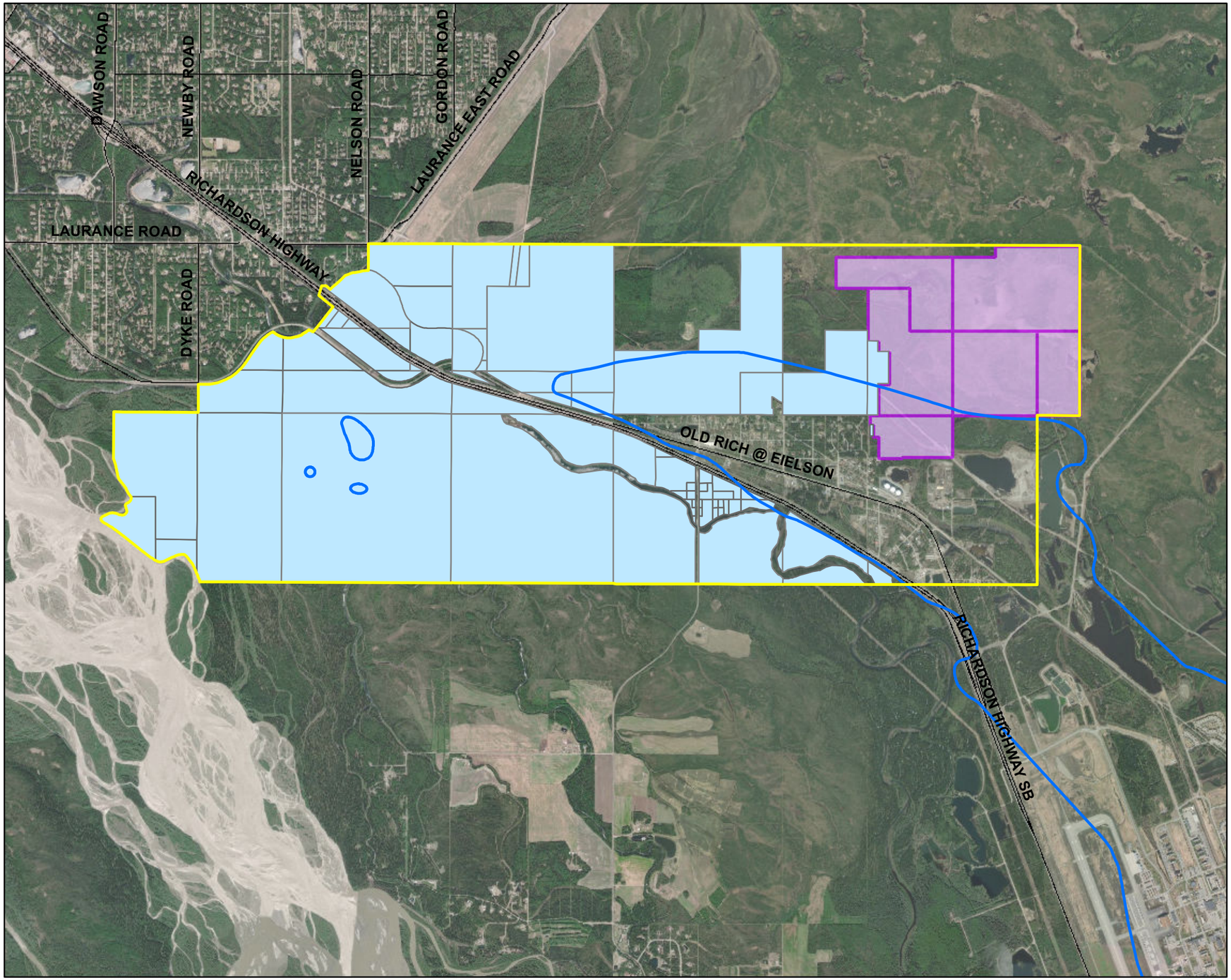
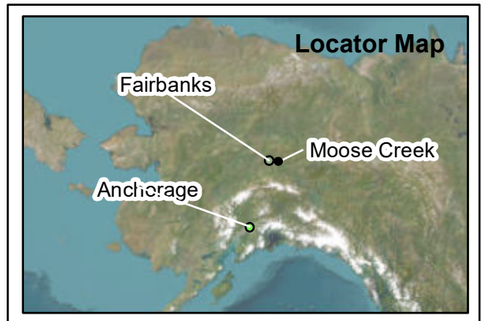
Garrison Slough
Putnam Ln
Hope St
Go Thata Way
Richardson Hwy
Old Rich
Adonis Ave
Grange Hall Rd
Maxar, Mi
N
0
0.3
0.6
1.2 Miles

Attachment B
Location Map





Legend

- Critical Water Management Area
- PFAS Plume as seen in 2021 EAFB Atlas
- Moose Creek Area Federal Owned Land Parcels
- Moose Creek Area State Owned Land Parcels
- Major Roads and Highways

1. Service Layer Credits: Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

UTM Zone 6N
WGS1984
Meters

N

0 1,625 3,250 Feet

Figure 3

Land Ownership In and Around Moose Creek, Alaska - State and Federal Properties

2022 Moose Creek LUCIP
Moose Creek, Alaska

Drawn By: SS	Date: 5/26/2023	
Checked By: BN	Contract: W911KB20D0014 Delivery Order: W911KB21F0112	

Document Path: V:\USACE ERS_20501201001\20501-20-106 Eielson RAO-LTM\07_Deliverables\5d_Moose Creek LUCIP\6. Draft-Final\GIS\MXD\Figure 3 Moose Creek State and Federal Ownership_VER4.mxd

Attachment C
Draft Restricted Use Authorization (RUA)

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
Statewide Abatement of Impaired Land Section

ADL 422279
United States Air Force
Restricted Use Authorization
AS 38.05.035 & AS 38.05.020

Effective this ____ day of _____ 20__, this restricted use authorization (RUA) is entered into by the State of Alaska, hereafter referred to as "grantor," and the United States Air Force, hereafter referred to as "grantee," whose sole addresses for purposes of notification under this RUA agreement are listed in section 28.

The grantor and the grantee agree that this RUA, including all attachments and documents that are incorporated in this RUA by reference, contains the entire agreement between the parties, and each of the covenants and conditions in this RUA including any attachments will be binding upon the parties and upon their respective successors and assigns. The grantor and the grantee further agree that this RUA is conditioned upon satisfactory performance by the grantor and the grantee of all covenants and conditions contained in this RUA. The grantee 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 grantee under this RUA, and the rights and remedies of the grantor.

This RUA is subject to all applicable state, federal, and municipal statutes, regulations, and ordinances in effect on the effective date of this RUA, and insofar as is constitutionally permissible, to all statutes, regulations, and ordinances placed in effect after the effective date of this RUA. A reference to a statute, regulation, or ordinance in this RUA includes any change in that statute, regulation, or ordinance, whether by amendment, repeal and replacement, or other means. This RUA 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 grantee or its agents in connection with this RUA or the value of the interest held under this RUA. In case of conflicting provisions, statutes, regulations, and ordinances take precedence over this RUA. This RUA shall not be construed as a grant or recognition of authority for promulgation or adoption of municipal ordinances that are not otherwise authorized.

In accordance with the provisions of AS 38.05.035 & AS 38.05.020, and the rules and regulations promulgated there under, a RUA is hereby granted in perpetuity unless amended or no longer required for field inspection activities as described in the February 2024 Land Use Controls

Implementation Plan for state properties. The United States Air Force (USAF) is responsible for ensuring that land use controls (LUCs) are maintained through monitoring and reporting until the concentrations of contaminants of concerns in the groundwater are at such levels as to allow unlimited use and unrestricted exposure. Maintenance and reporting of the LUCs will be conducted annually beginning in 2024. This RUA is located on the following described state lands:

Township 2 South, Range 3 East, Fairbanks Meridian, Alaska
Section 21: N1/2NE1/4, SE1/4NE1/4, E1/2W1/2NE1/4NW1/4, E1/2NE1/4NW1/4
Excluding N1/2N1/2N1/2NE1/4, N1/2NE1/4NE1/4NW1/4, NE1/4NW1/4NE1/4NW1/4 as conveyed by Quitclaim Deed recorded in Book 458 Page 496, Fairbanks Recording District on December 6, 1985.
Containing 122.5 Acres More or Less

Section 21: SW1/4NE1/4, SE1/4
Excluding SW1/4NW1/4NW1/4SE1/4, SW1/4NW1/4SE1/4, N1/2NW1/4SW1/4SE1/4, SW1/4NW1/4SW1/4SE1/4, W1/2SW1/4SW1/4SE1/4 as conveyed by Corrective Deed and Declaration of Taking Bk 1244 Pg 887, Fairbanks Recording District, March 19, 2001.
Containing 175 Acres More or Less

Section 22: W1/2SE1/4, SW1/4, W1/2NE1/4, NW1/4
Excluding N1/2NW1/4NW1/4NW1/4 and NW1/4NE1/4NW1/4NW1/4 conveyed by Quitclaim Deed recorded at Book 458 Page 496 Fairbanks Recording District, December 6, 1985.
Containing 472.5 Acres More or Less

Section 28: N1/2NE1/4
Excluding W1/2W1/2W1/2NW1/4NW1/4NE1/4 and W1/2SW1/4NW1/4NE1/4 as conveyed by Corrective Deed & Declaration of Taking Recorded at Bk 1244 Pg 0887 Fairbanks Recording District
Containing 73.5 Acres More or Less

According to the Plat, Approved by the Bureau of Land Management in Washington DC on May 28, 1958.

This RUA is issued subject to the following terms and conditions:

1. **Authorized Officer:** The Authorized Officer (AO) for the State of Alaska (State), is the DNR Commissioner or designee.

2. **Change of Contact Information:** The Grantee shall maintain current contact information

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with the AO. Any change of contact information must be submitted in writing to the AO.

3. **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.

4. **Directives:** Directives may be issued for corrective actions that are required to correct a deviation from design criteria, project specifications, stipulations, State statutes or regulations. Work at the area subject to the Directive may continue while implementing the corrective action. 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 DNR.

5. **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.

6. **Violations:** This authorization may be revoked upon violation of any of its terms, conditions, stipulations, 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.

7. **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.

8. **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.

9. **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.

10. **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.

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Nothing may be stored that would be an attractive nuisance to wildlife or create a potentially hazardous situation.

11. **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.

12. **Concurrent Use:** 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.

13. **Assignment:** This authorization may not be transferred or assigned without the prior written consent of the AO. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment.

    Assignment: In the event the grantee desires to transfer their interest in this authorization to another party the grantee shall submit in writing to the AO a request for assignment. The grantor reserves the right to modify and/or add stipulations for the authorization prior to approving the assignment. The grantor 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. Notwithstanding other requirements described in this authorization, assignments shall be restricted to those entities that are also eligible to obtain an authorization under the same statutory authority in which this authorization was issued.

14. **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.

15. **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.

16. **Ground Disturbance and Repair:** Grantee will refill holes, trenches and surface depressions resulting from development or maintenance activities with sand, gravel, native materials, or a substitute approved by the AO. Surface areas will be recontoured to the satisfaction of the AO so that they do not pose a threat to human safety or wildlife transit.

17. **Fuel and Hazardous Substances**: The use and/or storage of hazardous substances by the Grantee must be done in accordance with existing federal, state and local laws, regulations

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and ordinances. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances. Drip pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel. Vehicle refueling shall not occur within the annual floodplain or tidelands. This restriction does not apply to water-borne vessels provided no more than 30 gallons of fuel are transferred at any given time. During equipment maintenance operations, the site shall be protected from leaking or dripping hazardous substances or fuel. The Grantee shall place drip pans or other surface liners designed to catch and hold fluids under the equipment or develop a maintenance area by using an impermeable liner or other suitable containment mechanism.

18. **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.

19. **Preference Right:** No preference right for subsequent authorizations is granted or implied by this authorization.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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

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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 must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.scro.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero.spill@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

25. **Indemnification:** Unless specified herein, Grantee assumes all responsibility, risk and liability for all activities of Grantee, its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this authorization, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this authorization as stated herein. Grantee shall defend, indemnify and hold harmless the State of Alaska, its employees and agents, 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, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf. Within 15 days Grantee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the authorization.

28. **Notice:**

(a) Any notice or demand by the grantee will be made by hand delivery to the 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 grantor:

To the Grantor:

Division of Mining, Land and Water
Statewide Abatement of Impaired Land
3700 Airport Way
Fairbanks, AK
99709-4699

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(b) Any notice or demand by the grantor 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 grantee or its successor in interest designates in writing):

To the Grantee:

United States Air Force:
Attn: Environmental Restoration Project Manager, AFCEC/CZOP 10471
20th Street, Suite 345
JBER, AK 99506

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

29. **Waste Disposal:** On-site refuse disposal is prohibited, unless specifically authorized. All waste generated during operation, maintenance, and termination activities under this RUA 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.

30. **Performance Guaranty:** 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.

Attachment A: February 2024 Moose Creek Land Use Controls Implementation Plan

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By signing this RUA, the grantor and the grantee agree to be bound by its provisions.

Grantee:

_____

United States Air Force:
Environmental Restoration Project Manager

Grantor:

_____

John C Boyle III
DNR Commissioner

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 RUA and acknowledged voluntarily signing the same.

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

STATE OF ALASKA)
) ss.
Third 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 RUA 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: _____

Approved as to form February 9, 1994, and September 25, 2001.

_____
/s/ Elizabeth J. Barry, Assistant Attorney General

Recorder's Office: Return the recorded document to:
DNR DMLW, SAIL
ATTN: Alyssa Millard
3700 Airport Way
Fairbanks, AK 99709

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