

RETURN TO: Anchorage Water and Wastewater Utility
Engineering, Private Development Unit
Attn.: Ali Turker
3000 Arctic Blvd.
Anchorage, AK 99503-3898

Anchorage Recording District

PROVIDENCE-CHESTER CREEK SUBDIVISION, TRACT C-2
SANITARY SEWER MAIN EXTENSION AGREEMENT

AWWU File: S15-008
Plat: 2004-169

AMS: 2749
Zoning: PLI

THE MUNICIPALITY OF ANCHORAGE, (hereinafter the Municipality or MOA or AWWU), a municipal corporation, and ALASKA MENTAL HEALTH TRUST AUTHORITY, BY AND THROUGH THE ALASKA MENTAL HEALTH TRUST LAND OFFICE (hereinafter the Developer) enter into the following Agreement this _____ day of _____, 2016.

JOHN MORRISON executes this Agreement on behalf of the Developer. It is understood that the Developer is a Trust and that the person who executes this Agreement on behalf of the Developer does so in the capacity of Executive Director. JOHN MORRISON warrants that he has the authority to execute this Agreement on behalf of the Owner and Developer of the property which is the subject of this Agreement. The parties to this Agreement shall accept notices at the following addresses and telephone numbers:

DEVELOPER

Alaska Mental Health Trust Authority, by & through
the Alaska Mental Health Trust Land Office
Attn.: Bryan Yackel
2600 Cordova Street, Suite 100
Anchorage, AK 99503
Phone: (907) 269-7927
Fax: (907) 269-8905
Email: bryan.yackel@alaska.gov

MUNICIPALITY

Municipality of Anchorage
Water and Wastewater Utility
Attn.: Ali Turker
3000 Arctic Boulevard
Anchorage, AK 99503-3898
Phone: (907) 564-2747
Fax: (907) 562-0824
Email: ali.turker@awwu.biz

The real property which is the subject of this Agreement (hereinafter the Property) is located within the Anchorage Recording District and the Anchorage Sanitary Sewer Utility Service Area as certificated by the Regulatory Commission of Alaska, and is described as:

PROVIDENCE-CHESTER CREEK SUBDIVISION

Tract C-2

(Plat 2004-169, SW1734)

This legal description is taken from the plat 2004-169 for the subdivision. See attached map for approximate location of Property.

Section 1 The Project.

- A. The Developer shall provide a complete sanitary sewer collection system to serve the Property in conformance with the Wastewater Master Plan adopted by the Municipality. The sanitary sewer system shall include all sewer facilities necessary to provide sewer collection service to each lot and/or parcel.
- B. The Developer shall design, construct, and install sanitary sewer collection system per the approved project plan set from the Property to the Municipality's existing sanitary sewer system. The Developer shall pay the entire cost of constructing the sanitary sewer system to serve the Property. If the Municipality requires the Developer to oversize the sanitary sewer mains, the Municipality shall reimburse the Developer the difference between the cost of pipe actually required to serve the Property and that which was installed. The total cost of constructing sanitary sewer facilities under this Agreement is estimated to be as indicated in Section 2 below. This estimate shall be

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used to compute the project cost deposit as required by Paragraph 2.03 of Article II of this Agreement.

- C. In the event the proposed sanitary sewer collection system to be constructed under the terms of this Agreement serves other parcels of land which are not owned by the Developer, then no construction may commence until one of the following acts has been completed: [AS 42.05.385 (a) through (e)]
1. The Developer submits a signed, notarized statement to Anchorage Water and Wastewater Utility (AWWU), waiving all claims for future reimbursement from AWWU for providing sanitary sewer service to such other parcels of land.
 2. The owner of record of each such other parcel of land served, signs a notarized statement acknowledging his liability to pay AWWU an assessment if his parcel connects to the proposed sanitary sewer main within three (3) years from the date AWWU accepts the sewer main, and indicating his non-objection to the construction of the proposed sanitary sewer main.
 3. The Anchorage Municipal Assembly approves the construction of the proposed sanitary sewer main by authorizing the Municipality to execute this Agreement.

Section 2 Estimated Project Costs.

The Estimated Costs itemized below are predicated on the estimates provided by the Developer or his agents.

- A. Developer's Estimated Cost:
- | | |
|---|--------------|
| Estimated construction cost of approximately <u>360</u> linear feet of <u>8-inch</u> PVC sanitary sewer collection system and facilities: | T.B.D. |
| Estimated consultant engineering fees and other related costs (i.e. design, soils, survey, project administration, inspection, etc.): | T.B.D. |
| Estimated Municipal project administration and inspection costs (refer to Article 2.03 of this agreement): | T.B.D. |
| TOTAL ESTIMATED DEVELOPER'S COST: | T.B.D |
- B. Municipality's Estimated Share of Oversizing Cost: N/A
- C. **TOTAL ESTIMATED PROJECT COST:** **T.B.D.**

Section 3 Lateral and/or Trunk Assessment Charges.

The Developer agrees to pay the Municipality a per square foot assessment charge in lieu of lateral and/or trunk improvement district assessments for the Developer's benefit of currently existing sanitary sewer mains adjacent to or within the Property.

- A. The Developer shall pay, where applicable, a trunk assessment charge of \$0.03 (TIDAOLDCITY) per square foot of assessable property as its share of the cost of constructing the downstream sanitary trunk sewer which serves the Property. The Developer shall also pay, where applicable, a lateral assessment charge of \$0.00* per square foot of assessable property as its share of the cost of constructing the currently existing lateral sanitary sewer main adjacent to or within the Property. Said assessment charges shall become due and payable no later than ninety (90) days after the date on which the sanitary sewer main constructed under the terms of this Agreement passes a substantial completion inspection by the Utility and is available for customer service. Sewer lateral and/or trunk assessment charges not paid in full by the date due shall

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bear interest from the date the first installment is due at an annual interest rate equal to the effective annual interest rate of the last bonds sold by the Anchorage Wastewater Utility and, in addition, shall pay a collection charge as outlined in section 3(H) herein. Sewer assessment charges shall be paid in installments as follows:

<u>AMOUNT OF ASSESSMENT</u>	<u>INSTALLMENT SCHEDULE</u>
Less than \$500	1 lump sum payment
\$500 or more but less than \$1,000	2 equal annual installments
\$1,000 or more but less than \$2,500	5 equal annual installments
\$2,500 or more but less than \$5,000	10 equal annual installments
\$5,000 or more but less than \$7,500	15 equal annual installments
\$7,500 or more but less than \$15,000	20 equal annual installments
\$15,000 or more but less than \$25,000	25 equal annual installments
Amounts over \$25,000	30 equal annual installments

- B. Not used.
- C. The individual lots, which shall accrue an assessment charge, are as follows:

PROVIDENCE-CHESTER CREEK SUBDIVISION

(Plat 2004-169, SW1734)

Interest Rate: 6.64%							
		Lateral			Trunk		
Tract	Property TAX CODE	Area Served (SqFt)	Rate per SqFt	Principal (\$)	Area Served (SqFt)	Rate per SqFt	Principal (\$)
C-2**	00420212	Previously levied under the Capital Improvement Project (CIP), Goose Lake Sanitary Sewer Improvement Project No.: A 109.70. The Developer does not owe Lateral or Trunk assessments for this property.					

NOTE*: Lateral sewer assessments will be charged at \$0.00 per square foot of benefited property. Developer will contribute main in lieu of assessments.

NOTE:** Post levy of assessments, Tract C-2 was platted away from the sanitary sewer main built under the Capital Improvement Project, Goose Lake Improvement Project No.: A 109.70.

Assessment charges for the above lots were/will be calculated in accordance with the Anchorage Wastewater Utility Tariff and the Anchorage Municipal code in effect on the date this Agreement is executed.

- D. Not Used.
- E. All charges payable by the Developer under this Agreement are a lien upon the Property. In addition to pursuing any other remedy provided by law, the Municipality may recover any past due charges in the same manner as delinquent special assessments are collected; that is, by foreclosure and sale of the Property. The Municipality shall release this lien upon the Property, or any lot or parcel within the Property, when the charges for the Property, or the charges for any lot or parcel within the Property, have been paid.
- F. All outstanding charges shall be paid when the Developer transfers the Property, or any lot or parcel within the Property, to another; provided, however, that if for any reason such payments are not made at the time of transfer, the charges shall be billed to the Owner of record of said Property at the time of billing.

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- G. Upon the Developer's full performance of all its obligations under this Agreement, that portion of the Property considered under the provisions of the Anchorage Wastewater Utility Tariff to be legally served by lateral sanitary sewer will be omitted from any future lateral sewer improvement districts which may be formed to provide lateral sanitary sewer service to adjacent properties.
- H. In addition to all other charges, the Developer will pay an annual collection charge pursuant to AMC 19.20.265 for all billable assessment accounts. The amount of such annual charge shall be the same as that established for special assessments for sewer service.

Section 4 Reimbursement for Lateral Sanitary Sewer Service to Other Properties.

- A. After the Municipality accepts the sewer system constructed by the Developer under this Agreement, other parcels of land, which are benefited by the sewer system but not referred to in this Agreement as the Property, may request sewer service. During the first three (3) years immediately following the completion of a successful final inspection of the sewer system constructed by the Developer, and upon receipt of a request for sewer service to such other parcels, the Municipality shall initiate action to collect a levy upon connection assessment from the connecting parcels. The levy upon connection assessment shall be determined in accordance with the Wastewater Utility Tariff in effect on the date the benefited parcel is connected to the sewer system, and shall be reimbursed to the Developer as authorized by that Tariff. No reimbursement shall be due if the Developer fails to provide the Anchorage Wastewater Utility with a certified project cost statement and an as-built Mylar drawing of the sewer system constructed within 180 days of the date a successful final inspection was performed sanitary sewer collection system constructed. Parcels of land submitting a request for sewer service following completion of the three (3) year period mentioned above shall be granted permission to connect to the sewer system constructed by the Developer without paying a sewer lateral levy upon connection charge and without any reimbursement to the Developer. Parcels of land to be benefited by the construction of this sewer system include:

NONE
- B. The proposed service to the above parcels is based on a preliminary routing of the sanitary sewer collection system and shall be revised, if necessary, in accordance with as-built construction. The above-specified parcels are inserted for planning purposes only.
- C. It is understood that in no case shall the Municipality reimburse the Developer until such time as the benefited property owner makes payment of, or enters into a formal agreement to make payment of, his sewer levy upon connection charges to the Municipality.

Section 5 Special Provisions.

Section Not Used

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ARTICLE I

GENERAL PROVISIONS

1.01 Application of Article.

Unless this Agreement expressly provides otherwise, all provisions of this Article apply to every part of this Agreement.

1.02 Permits, Laws and Taxes.

The Developer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the Developer under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Developer shall pay all taxes pertaining to its performance under this Agreement.

1.03 Relationship of Parties.

Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer or any contractor or subcontractor of the Developer be deemed an agent, employee or partner of the Municipality, or otherwise associated with the Municipality other than, in the case of the Developer, as an independent contractor. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of the Municipality, or otherwise associated with the Municipality other than, in the case of the Developer, as an independent contractor. The Developer shall notify all its contractors and subcontractors of the provisions of this Paragraph.

1.04 Engineer's Relation to Municipality.

Notwithstanding Paragraph 2.01, of Article II, or any agreement whereby the Municipality reimburses the Developer's engineering costs; an engineer retained by the Developer to perform work under this Agreement shall not be deemed an agent, employee, partner or contractor of the Municipality, or otherwise associated with the Municipality.

1.05 Developer's Responsibility.

The Developer shall be solely responsible for the total performance of all terms, covenants and conditions of this Agreement notwithstanding the Developer's delegation to another of the actual performance of any term, covenant or condition hereof.

1.06 Not Used.

1.07 Disclaimer of Warranty.

Notwithstanding this Agreement or any action taken by any person hereunder; neither the Municipality nor any municipal officer, agent or employee warrants or represents the fitness, suitability, or merchantability of any property, plan, design, material, workmanship or structure for any purpose.

1.08 Cost of Documents.

All plans, reports, drawings or other documents that this Agreement requires the Developer to provide the Municipality shall be furnished at the Developer's expense.

1.09 Assignments.

- A. Except insofar as subparagraph B of this Provision specifically permits assignments, any assignment by the Developer of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by the Developer to assign any part of its interest or delegate any duty under this Agreement shall constitute a default entitling the Municipality to invoke any remedy available to it under Paragraph I.10 of this Article.

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B. The Developer may not assign its interest or delegate its duties under this Agreement unless expressly permitted in writing by the Municipality. Specific to this agreement the Municipality permits the Developer to delegate those responsibilities and duties expressed for design and engineering to DOWL. Additionally, the Municipality permits the Developer to delegate those responsibilities and duties expressed for physical construction of the improvements to an independent contractor and/or contractors to be determined at a later date.

1.10 Default: Municipality's Remedies.

- A. The Municipality may declare the Developer to be in default:
1. If the Developer is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors; or
 2. If the Developer has failed in any measurable way to perform its obligations under this Agreement, provided the Municipality gives the Developer notice of the failure to perform and the Developer fails to correct the failure within thirty (30) days of receiving the notice; or, if the failure requires more than thirty (30) days to cure, the Developer fails within 30 days of receiving the notice to commence and proceed with diligence to cure the failure.
- B. Upon a declaration of default the Municipality may do any one or more of the following:
1. Terminate this Agreement without liability for any obligation maturing subsequent to the date of the termination.
 2. Perform any act required of the Developer under this Agreement, including constructing all or any part of the improvements, after giving seven (7) day notice in writing to the Developer. The Developer shall be liable to the Municipality for any costs thus incurred. The Municipality may deduct any costs thus incurred from any payments then or thereafter due the Developer from the Municipality, whether under this Agreement or otherwise.
 3. Exercise its rights under any performance or warranty guarantee securing the Developer's obligations under this Agreement.
 4. Pursue any appropriate judicial remedy including but not limited to an action for injunction and civil penalties pursuant to the Anchorage Municipal Code.

1.11 Non-Waiver.

The failure of the Municipality at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of the Agreement or any part hereof, or the right of the Municipality thereafter to enforce each and every provision hereof.

1.12 Effect of Standard Specifications and AWWU Design and Construction Practices Manual.

The Municipality of Anchorage Standard Specifications (MASS) and the Anchorage Water and Wastewater Utility Design and Construction Practices Manual in effect at the time this Agreement is executed, as well as Title 18 of the Alaska Administrative Code and the State of Alaska criteria adopted for the design of water and/or sanitary sewer facilities shall be the minimum standards for performance under this Agreement unless otherwise specifically

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provided in writing. Definitions or other provisions in the standard specifications describing the relationships and responsibilities of parties to Municipal construction contracts do not apply herein to the extent that they conflict with any provision of this Agreement.

1.13 Amendment.

The parties may amend this Agreement only by mutual written agreement, which shall be attached hereto.

1.14 Jurisdiction: Choice of Law.

Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The laws of the Municipality of Anchorage and State of Alaska shall govern the rights and duties of the parties under this Agreement.

1.15 Definitions.

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

- A. "ACCEPTANCE" by the Municipality means a determination that an improvement meets municipal construction standards, and does not refer to accepting a dedication of the improvement by the Developer.
- B. "AS-BUILT DRAWINGS" means the plan and profile reproducible Mylar drawings, verified by a registered professional engineer, to be the actual horizontal and vertical alignment, distance, grade, amounts, etc. depicting the true location of utility improvements actually constructed.
- C. "AWWU" means the Anchorage Water and Wastewater Utility.
- D. "CERTIFIED COST STATEMENT" means an itemized statement provided to AWWU of costs certified by the Developer to be the actual and final costs of water and/or sanitary sewer facilities constructed. A copy of the final pay estimate and/or other applicable billings sufficient to verify all costs shall be included. A form to be used when reporting certified costs shall be provided by the Municipality.
- E. "AWWU DESIGN and CONSTRUCTION PRACTICES MANUAL" are the Utility minimum standards for design of water and sanitary sewers in the Municipality of Anchorage.
- F. "FINAL INSPECTION" means that inspection performed by the Municipality after completion of all improvements required of the Developer under the terms of this Agreement. All improvements must satisfactorily complete a final inspection before placing any part of the improvements under warranty.
- G. "IMPROVEMENTS" means work which the Developer is required to perform under the terms of this Agreement.
- H. "MUNICIPALITY" for the purposes of administering this Agreement, means the General Manager of the Anchorage Water and Wastewater Utility, or his designee.
- I. "RECORD DRAWINGS" means the plan and profile reproducible Mylar drawings, verified by a registered professional Engineer to be the horizontal and vertical alignment, distance, grade, amounts, etc. as reflected in survey notes, contractor's notes, line and grade notes, and engineer's notes, and as relates to the basic control rather than the construction stake line. When record drawings are submitted the engineer shall identify the contractor's name and address; a reference to the line and grade survey book number; the engineering firm's name and address, and a reference to the engineering survey book number. Record drawings will only be accepted as a substitute for as-built drawings if the Developer's engineer notes which portion of the

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drawing information was provided by the contractor, which by the line and grade person, and which by the engineer.

- J.

"STANDARD SPECIFICATIONS" for purposes of this agreement, means those construction specifications maintained and periodically reviewed and modified by the Municipality of Anchorage which are published as the Municipality of Anchorage Standard Specifications.
- K.

"SUBSTANTIAL COMPLETION" means that state or event at which the improvements have passed requisite tests and inspections, performed or witnessed by the Municipality of Anchorage, and are available for the beneficial use for the purpose and in the manner intended by the agreement document and approved plans.
- L.

"WARRANTY INSPECTION" means that inspection performed by the Municipality at the end of the two-year warranty period. All improvements must satisfactorily complete a warranty inspection before final acceptance of the improvements by the Municipality.
- M.

"WATER/SANITARY SEWER EXTENSION" means that water or sanitary sewer line which reaches from the water or sanitary sewer service connection to the structure and is generally located on private property.
- N.

"WATER/SANITARY SEWER SERVICE CONNECTION" means the pipe and appurtenances required to connect an individual property or facility to the water or sanitary sewer main and which terminates at the property line or easement limit and shall not include the necessary further extension of the water or sanitary sewer system onto private property.

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ARTICLE II

PREREQUISITES TO CONSTRUCTION

The Developer shall not obtain permits for construction of the improvements or commence construction until the requirements of Paragraphs 2.01 through 2.08 below have been met.

2.01 Engineer.

- A. The Developer shall retain an Engineer registered as a Professional Engineer under the laws of the State of Alaska to design and administer the construction of the improvements, including preparing plans and specifications, inspecting and controlling the quality of the work described herein in accordance with the Municipality's recommended procedures for consulting engineers. If this agreement requires the Municipality to reimburse the Developer for engineering costs, the professional fee schedule of the Engineer shall be attached as an appendix hereto.

The Developer has retained BRAD DOGGETT, P.E., License 10360, license expiration date, 12/31/2017.

Firm: DOWL
Mailing Address: 4041 B Street
Anchorage, Alaska 99503
Telephone No.: (907) 562-2000
Fax No.: (800) 865-9847
E-Mail: bdoggett@dowl.com

- B. The Engineer hired by the Developer shall be retained so as to be available throughout the entire two-year warranty period to effect, through the contractor and/or the Developer, correction of all warranted conditions. A letter to this effect shall be signed by both the Developer and the Engineer and shall be filed with the Anchorage Water and Wastewater Utility before a Notice to Proceed with the construction of this project is approved.
- C. The Developer shall inform the Municipality of the name and mailing address of the Engineer he has retained to perform the duties described in paragraphs A and B above and agrees that notice to the Engineer at the address so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the Municipality of any change in the information required under this Paragraph.

2.02 Plans and Specifications.

- A. The Developer shall submit to the Municipality, in such form as the Municipality may specify, all plans and specifications pertaining to the construction of the improvements. The Developer shall submit design drawings in accordance with the guidelines of AWWU's Design and Construction Practices Manual for Sanitary Sewer Improvements. The Municipality of Anchorage Water and Wastewater Utility (AWWU) reserves the right to return incomplete drawings (less than 85% complete) to the Developer for completion and resubmittal.
- B. The Developer shall submit to the Municipality proof that an Engineer has been retained to perform the duties described in Paragraph 2.01 of Article II.
- C. If the Municipality requires soil tests or other tests pertaining to the design of improvements, the Developer shall submit reports of the test results with the plans and specifications.
- D. The Municipality shall approve the plans and specifications as submitted or indicate to the Developer how it may modify them to secure approval within three weeks from either: (1) the submission of all plans and specifications for the improvements, or (2) the

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payment of the deposit required upon plan submission under Paragraph 2.03 below, whichever occurs later.

2.03 Project Cost Deposit.

The Developer shall deposit with the Municipality the amounts required under Section 24.20.040 of the Anchorage Municipal Code and Paragraph 3.03.C of this Agreement. The Municipality does not guarantee that final billings will be in accordance with amounts stated in this agreement, or orally given estimates. It is expressly understood by the Developer that a Developer shall pay the Municipality's actual cost associated with all work performed under this agreement. The Municipality's cost shall include, but is not limited to, agreement administration, plan checking, field surveillance, testing, final inspections, warranty inspections and overhead.

2.04 Liability Insurance.

The Developer shall provide proof that it has acquired the insurance required under the Standard Specifications of the Municipality in effect at the time of the execution of this Agreement, in the form prescribed in those Standard Specifications, or, if the Developer has engaged a prime contractor to perform the work under this Agreement, proof that the prime contractor has acquired such insurance, naming the Developer as an insured.

2.05 General Standard of Workmanship.

The Developer shall construct all improvements in accordance with plans, specifications and contracts approved by the Municipality and with the terms, covenants and conditions of this Agreement. The Developer shall not incorporate any material or equipment into an improvement unless the Municipality has approved its use. Unless the Municipality specifically agrees otherwise in writing, all materials, supplies and equipment incorporated into an improvement shall be new.

2.06 Surveyor.

All surveys required for the completion of improvements under this Agreement shall be made by a person registered as a Professional Land Surveyor under the laws of the State of Alaska.

2.07 Required Reporting.

A. Quality Control:

1. Prior to the preconstruction conference, the Developer shall submit a certified Quality Control Plan for review and approval which shall include the following:
 - a. Name and telephone number(s) of the Engineer;
 - b. Name and telephone number(s) of any individual(s) under the Engineer's direct supervision who will be conducting field inspections;
 - c. Engineer's review and signature procedure of field inspections performed by personnel under the Engineer's direct supervision;
 - d. Procedure(s) to be used to note and correct construction deficiencies;
 - e. Procedure(s) to be used to coordinate pipe testing with AWWU;
 - f. Procedure(s) to be used to comply with minimum testing requirements specified in the Municipality of Anchorage Standard Specifications (MASS);
 - g. Procedure(s) to be used to request final inspections by AWWU.
2. The Developer shall submit written inspection reports on a weekly basis of material testing results and summaries of daily activities to the Anchorage Water and Wastewater Utility. Copies of materials testing results shall be attached to inspection reports. Weekly reports shall be submitted no later than 4:00 PM on Tuesday following each project work week.

Failure to submit weekly inspection reports shall be cause for AWWU to issue a stop work order under the provisions of Paragraph 2.10.A of this Agreement.

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Engineer's inspection shall include, but not necessarily be limited to, verification of the following:

- a. adequacy of pipe foundation material;
 - b. compliance with approved vertical and horizontal pipe alignment;
 - c. bedding and backfill material type, quality, placement and density;
 - d. system component material by type, size and installation (for example pipe, valves, fittings, manholes, fire hydrant assemblies, pipe restraints, curb stops, corporation stops, polyethylene encasement of pipe, etc.);
 - e. compliance with required pipe tests;
 - f. compliance with any and all applicable permit stipulations; and
 - g. observed deficiencies during inspection or testing; actions taken to correct deficiencies; and notes of discussion with AWWU pertaining to the deficiencies.
3. The Developer shall coordinate testing and inspections with the Anchorage Water and Wastewater Utility and provide advance notice in accordance with Article 2.5 of Section 50.02 (Sanitary Sewer) of MASS for all tests and inspections to be witnessed by the Utility.
- B. Expressed or implied approval by the Municipality of any report or inspection shall not authorize any deviation from approved plans and specifications or from the terms of this Agreement. If during the course of construction field conditions warrant changes to the approved plans, the Developer shall obtain written concurrence from AWWU prior to implementing these changes.

2.08 Guarantee of Improvements.

- A. In order to guarantee the construction of this Project, per contract number **Contract between Developer & Contractor**, Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office has secured a performance and payment Bond No. _____, in the amount of _____ Dollars (\$_____). Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office is the Obligee of the bond, AWWU is a department of the Municipality of Anchorage, **Contractor Name** is the Principal, and **Insurance/Bonding Company** is the Surety.

The Developer executes the improvement under this Agreement as part of the **AWWU Project Name** Project, per contract number **Contract between Developer & Contractor**. The Developer will notify AWWU of any claim, action or demand on the bond. Upon any demand on the bond the Developer will dedicate, an amount equal to or greater than the estimated total project cost as reflected in Section 2C of this Agreement plus project overrun allowances as outlined in AMC 21.08.060.G.2 for the completion of improvements under this Agreement. If the Principal fails to meet the terms of this agreement upon any claim, action or demand on the bond, then The Developer will provide AWWU with the funding necessary for the completion of the improvement required by this Agreement.

The guarantee of improvements will not be released by the Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office until all improvements required by this Agreement have been completed by the Developer; the improvements inspected and accepted under warranty by AWWU, and an acceptable Improvement Warranty posted as required by Paragraph 3.04 of Article III of this Agreement.

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- B. The total value of the guarantee of improvements provided shall be equal to or greater than the estimated total project cost as reflected in Section 2C of this Agreement plus project overrun allowances as outlined in AMC 21.08.060.G.2. The guarantee of improvements will not be released by the Municipality until all improvements required by this Agreement have been completed by the Developer; the water and/or sanitary sewer improvements inspected and accepted under warranty by the Municipality, and an acceptable warranty guarantee posted as required by Paragraph 3.04 of Article III of this Agreement.

2.09 Surveillance.

- A. AWWU may monitor the progress of the improvements and the Developer's compliance with this Agreement, and perform any inspection or test which it deems necessary to determine whether the improvements conform to this Agreement.
- B. If the Developer fails to notify AWWU of inspections, tests and construction progress as required by Paragraph 2.07 above, the Utility may require, at the Developer's expense, retesting, exposure of previous stages of construction, or any other steps which the Utility deems necessary to determine whether the improvements conform to this Agreement.
- C. Any monitoring, tests or inspections that AWWU orders or performs pursuant to this Paragraph are solely for the benefit of the Utility. AWWU does not undertake to test or inspect the improvements for the benefit of the Developer or any other person.

2.10 Stop Work Orders.

- A. If AWWU determines that there is a substantial likelihood that the Developer will fail to comply with this Agreement, or if the Developer does fail to comply, the Utility may stop all further construction of improvements by posting a stop work order at the site of the nonconforming construction and notifying the Developer or his Engineer of the order.
- B. A stop work order shall remain in effect until the Anchorage Water and Wastewater Utility approves:
1. Arrangements made by the Developer to remedy the nonconformity; and
 2. Assurances by the Developer that future nonconformities will not occur.
- C. The issuance of a stop work order under this Paragraph is solely for the benefit of the Municipality. The Municipality does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this Paragraph shall be grounds for an action or claim against the Municipality, or for an extension of time to perform the work.
- D. The Developer shall include in all contracts for work to be performed or materials to be used under this Agreement the following provision:

The Municipality of Anchorage, pursuant to a Water Main/Sanitary Sewer Main Extension Agreement on file with the Municipality and incorporated herein by reference, has the authority to inspect all work or materials under this contract, and to stop work in the event that the work performed under this contract fails to comply with any provision of the Water Main/Sanitary Sewer Main Extension Agreement. In the event that a stop work order is issued by the Municipality of Anchorage, the contractor immediately shall cease all work, and await further instruction from the Developer.

2.11 Specified Completion Date.

All improvements required under this Agreement shall be completed within not less than two (2) years nor more than three (3) years from the date of execution hereof (AMC 21.08.060.C).

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Plat: 2004-169

Zoning: PLI

AWWU File: S15-008

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ARTICLE III

ACCEPTANCE OF IMPROVEMENTS

3.01 Prerequisites to Acceptance.

The Anchorage Water and Wastewater Utility shall not finally accept the improvements constructed under the terms of this Agreement until all the following requirements have been met.

A. As-Built or Record Drawings.

The Developer shall provide AWWU with one acceptable set of reproducible Mylar as-built or record drawings and two blue-line copies thereof for each improvement constructed. The as-built or record drawings shall be submitted to the Anchorage Water and Wastewater Utility within one hundred - eighty days (180) days following successful completion of a final inspection of this project by Utility inspectors. The as-built or record drawings and blue-line copies shall be certified to represent accurately the improvements as actually constructed and shall be signed by a Professional Engineer, registered under the laws of the State of Alaska. Failure to submit approved as-built or record drawings within this 180 day period shall be sufficient cause for the Utility to deny reimbursement to the Developer for providing water/sewer service to adjacent properties. The project warranty period for the improvements constructed under the terms of this Agreement will not commence until after the as-built or record drawings have been received and approved by AWWU. The Developer shall submit a copy of the post construction survey notes as well as the Engineer's "during construction" inspection notes to AWWU along with the as-built or record drawings. See paragraph 1.15 for a definition of as-built and record drawings.

B. Certified Cost Statement.

The Developer shall provide a certified cost statement to AWWU within 180 days of completion of a successful final inspection of the water/sanitary sewer lines by the Utility. The certified cost statement shall be notarized and submitted on a form provided by the Anchorage Water and Wastewater Utility and shall consist of the total project costs including all labor, material, equipment, engineering inspection and all other direct or indirect costs incurred. A copy of the final pay estimate and/or other applicable billings or invoices sufficient to verify all costs shall be included. Failure to submit an approved certified cost statement within this 180 day period shall be sufficient cause for the Utility to deny reimbursement to the Developer for providing water/sanitary sewer service to adjacent properties. The project warranty period for the improvements constructed under the terms of this Agreement will not commence until after the certified cost statement has been received and approved by AWWU.

C. Inspection and Testing.

1. During the course of construction of the improvements required by this Agreement, or upon receiving notice from the Engineer that the Developer has completed the improvements, AWWU shall schedule an inspection of the improvements. The Utility may inspect the improvements and any related work in dedicated easements or rights-of-way. Prior to scheduling a final inspection with Anchorage Water and Wastewater Utility personnel, the Developer, the Engineer and the Contractor shall perform a project inspection jointly and correct any deficiencies or discrepancies found.
2. AWWU shall inform the Developer in writing of any deficiencies in the work found during the course of its inspections.
3. At its own expense, the Developer shall correct all deficiencies found by the inspection performed under subparagraph 1 of this Paragraph. Upon receiving

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written notice that the deficiencies have been corrected, AWWU shall re-inspect the improvements, unless mutually agreed upon by the AWWU Engineer and the developer that additional time is necessary.

4. AWWU may continue to re-inspect the improvements until the Developer has corrected all deficiencies in the improvements.
5. A final inspection will be performed in accordance with the Municipal Standard Specifications and witnessed by Anchorage Water and Wastewater Utility personnel. This final inspection will take place after completion of all improvements and will consist of, but is not limited to, the following as appropriate:
 - a. Check Sewer Manholes for proper Grouting, Ram neck, Smooth Inverts, Beaver Slides, etc.,
 - b. Location Markers for all Sewer Stub-Outs.

A copy of the final inspection results will be furnished to the Developer itemizing any existing deficiencies. Upon notification that the deficiencies have been corrected, AWWU will perform another final inspection of those items.

6. After a final inspection has revealed that all improvements and related work in dedicated easements and rights-of-way meet Municipal standards; after the Developer has furnished as-built or record drawings and a notarized certified cost statement; and after the Developer has deposited the fees required by AMC 24.20.040; AWWU shall notify the Developer that the improvements have been accepted under a two (2) year warranty period.
- D. This Project must pass substantial completion inspection by AWWU prior to AWWU issuing any on-property water and sanitary sewer service extension permits associated.
- E. Deferral of Surface Improvements to Warranty Period.
1. Prior to final acceptance all construction must be inspected per Article III, Section 3.01.C above unless the Developer has acquired approval from the AWWU Engineering Division Director to defer certain improvements to the warranty period. Deferred items will only include surface improvements, that from construction sequencing prospective, benefit the overall project to be completed after water turn on, final platting, the completion of record drawings, the submittal of the certified cost statement, and submittal of improvement warranty.
 2. All improvements deferred must be inspected as part of the warranty inspection under Article III, section 3.07.A meeting the same requirements as the final inspection per Article III, Section 3.01.C.
 3. In order to defer surface improvements to the warranty period the developer must increase the improvement warranty guarantee referenced within Article III, Section 3.04.A. The increased amount shall be based on the MOA Average bid tab pricing to construct the items deferred.

3.02 Consequence of Acceptance of Improvements.

AWWU's final acceptance of the improvements constitutes a grant to the Utility of all the Developer's rights, title and interest in and to all the improvements, together with all easements, rights-of-way or other property interest not previously conveyed which are necessary to provide adequate access to the water and/or sanitary sewer improvements.

3.03 Developer's Warranty.

- A. The Developer shall warrant the design, construction, materials and workmanship of the improvements against any freezing, failure and/or defect in design, construction,

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material or workmanship which is discovered prior to the expiration of the two years warranty period from the date the Utility notifies the Developer of the acceptance of the improvements.

- B. This warranty shall cover all direct and indirect costs of repair or replacement; damage to the property or other improvements to facilities owned by AWWU or any other person caused by freezing and/or other failure or defect; and any increase in cost to AWWU for operating and maintaining the improvements resulting from freezing and/or such other failures, defects or damage.
- C. Prior to acceptance under warranty of this project, the Developer shall provide the Anchorage Water and Wastewater Utility with a cash deposit as required by Anchorage Municipal Code, Chapter 24.20.040.D to cover the Utility's costs incurred during the warranty period. This cash deposit is in addition to the warranty guarantee required by Paragraph 3.04 below. The amount of this deposit shall be as indicated below and shall be based on the Developer's certified cost statement for this project.

<u>CERTIFIED COSTS</u>	<u>REQUIRED DEPOSIT</u>
\$10,000.00 or less	\$500.00
\$10,000.01 to \$50,000.00	\$1,000.00
\$50,000.01 to \$150,000.00	\$1,500.00
Over \$150,000.00	\$2,000.00

- D. Any action or omission to take on the part of AWWU authorized by this Agreement including but not limited to operation or routine maintenance of the improvements prior to acceptance, or surveillance, inspections, review or approval of plans, tests or reports, shall in no way limit the scope of the Developer's warranty.

3.04 Improvement Warranty.

- A. To secure the Developer's performance of the warranty under Paragraph 3.03 above, the guarantee of improvements provided by the Developer under Paragraph 2.08 of Article II shall remain in effect until the end of the warranty period, or until the Developer has furnished some other type of acceptable and adequate warranty guarantee as indicated in subparagraph B below.
- B. An acceptable warranty guarantee may be a corporate Surety Bond, a Cash Deposit, or a Letter of Credit in an amount equal to a percent of the project's approved certified cost statement as set forth below: (See AMC 21.08.060.I.2.b)

<u>Certified Project Cost</u>	<u>Percent to Secure Warranty</u>
Less than \$500,000	10.0%
\$500,000 to \$1,000,000	7.5%
More than \$1,000,000	5.0%

- C. The warranty period shall mean a period of two (2) years from and after acceptance under warranty of the improvements by AWWU. The Warranty period shall be extended if the Developer has not satisfied final acceptance requirements of the Subdivision agreement, if applicable, until the date of final acceptance. The warranty period shall be understood to imply prompt attention by the Developer to repair any defects that occur. In those instances where the water or sanitary sewer is constructed in conjunction with other public improvements, this warranty period shall run concurrently with the warranty of the last improvement to be constructed.

3.05 Municipality's Remedies Under Warranty.

- A. AWWU shall notify the Developer in writing upon its discovery of any failure or defect covered by the warranty required in Paragraph 3.03 above. The Utility shall notify the Developer before conducting any tests or inspections to determine the cause of the failure or defect, and shall notify the Developer of the results of all such tests and inspections.

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- B. The Developer shall correct any failure or defect covered by warranty within thirty (30) days of receiving notice of the failure or defect from AWWU. The Developer shall correct the failure or defect at its own expense and to the satisfaction of AWWU. AWWU shall inspect the corrected defect within 30 days of receiving written notice from the Developer.
- C. If the Developer fails to correct the failure or defect within the time allowed by subparagraph B above, AWWU may correct the failure or defect at the Developer's expense. If the Developer fails to pay AWWU for the corrective work within thirty (30) days of receiving the Municipality's bill thereof, AWWU may pursue any remedy provided by law of this Agreement to recover the cost of the corrective work.
- D. AWWU reserves the right to immediately remedy, at the Developer's sole expense, any failure or defect determined by AWWU to be hazardous in the event the failure or defect, if not corrected promptly, jeopardizes life and/or property.

3.06 Conditions of Reimbursement.

If this Agreement requires AWWU to reimburse the Developer for all or part of the cost of an improvement, the reimbursement shall be conditioned upon the Developer's performance of all its obligations under this Agreement and upon the successful sale of bonds.

3.07 Completion of Performance - Release of Warranty.

- A. AWWU shall perform a year-end warranty inspection of all improvements constructed prior to the end of the two-year warranty period, to determine whether all improvements and related work within the dedicated easements and rights-of-way continue to meet Municipal Standard Specifications (MASS). AWWU shall also insure the Developer has adjusted infrastructure to final grade in accordance with MASS requirements associated with work done in conjunction with final acceptance of the Subdivision Agreement, if applicable. A copy of the Year End Warranty Inspection results will be furnished to the Developer itemizing any existing deficiencies.

After all deficiencies have been corrected to the satisfaction of AWWU, the Utility shall notify the Developer that the Anchorage Water and Wastewater Utility accepts full responsibility for all future maintenance of the public water and/or sanitary sewer facilities constructed under this Agreement. Prior to releasing any Guarantee of Improvements and/or deposit then in effect, pursuant to Paragraph 3.05 above, the Developer shall correct any failure or defect in the work revealed by the warranty inspection.

- B. Upon the Developer's satisfactory performance of all its obligations under this Agreement, AWWU shall execute a written statement acknowledging such performance and shall release any remaining security posted by the Developer under this Agreement.
- C. AWWU reserves the right to refuse to enter into an Agreement with any Developer for the future extension of water and/or sanitary sewer mains when said Developer fails or refuses to comply in a timely manner with the conditions of this Agreement or is currently delinquent in the payment of any account owed to AWWU.

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IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set forth above.

MUNICIPALITY OF ANCHORAGE:

DEVELOPER

By: _____
J. BRETT JOKELA, P.E.
General Manager
Anchorage Water and Wastewater Utility

By: _____
JOHN MORRISON
Executive Director
Alaska Mental Health Trust Authority,
by and through the Alaska Mental
Health Trust Land Office

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Alaska, duly sworn and commissioned as such, personally appeared J. BRETT JOKELA, P.E., known to me to be the General Manager of the Anchorage Water and Wastewater Utility that executed the foregoing instrument, and acknowledged that he executed said instrument as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal on the day and year first above written.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared JOHN MORRISON, to me known to be the Executive Director of the Trust Land Office, on behalf of Developer named in the foregoing instrument, and he acknowledged to me that he had in his official capacity aforesaid executed the foregoing instrument as the free act and deed of the said trust for the uses and purposes therein stated.

WITNESS my hand and official seal on the day and year first above written.

Notary Public in and for Alaska
My Commission Expires: _____

RETURN TO:

Anchorage Water and Wastewater Utility
Engineering, Private Development Unit
Attn.: Ali Turker
3000 Arctic Blvd.
Anchorage, AK 99503-3898

Anchorage Recording District

PROVIDENCE-CHESTER CREEK SUBDIVISION, TRACT C-2
WATER MAIN EXTENSION AGREEMENT

AWWU File:

W15-008

AMS:

2748

Plat:

2004-169

Zoning:

PLI

THE MUNICIPALITY OF ANCHORAGE, (hereinafter the Municipality or MOA or AWWU), a municipal corporation, and ALASKA MENTAL HEALTH TRUST AUTHORITY, BY AND THROUGH THE ALASKA MENTAL HEALTH TRUST LAND OFFICE (hereinafter the Developer) enter into the following Agreement this _____ day of _____, 2016.

JOHN MORRISON executes this Agreement on behalf of the Developer. It is understood that the Developer is a Trust and that the person(s) who executes this Agreement on behalf of the Developer does so in the capacity of Executive Director of the Trust Land Office. JOHN MORRISON warrants that he has the authority to execute this Agreement on behalf of the Owner and Developer of the property which is the subject of this Agreement. The parties to this Agreement shall accept notices at the following addresses and telephone numbers:

<u>DEVELOPER</u>	<u>MUNICIPALITY</u>
Alaska Mental Health Trust Authority, by & through the Alaska Mental Health Trust Land Office	Municipality of Anchorage Water and Wastewater Utility
Attn.: Bryan Yackel	Attn.: Ali Turker
2600 Cordova Street, Suite 100	3000 Arctic Boulevard
Anchorage, AK 99503	Anchorage, AK 99503-3898
Phone: (907) 269-7927	Phone: (907) 564-2747
Fax: (907) 269-8905	Fax: (907) 562-0824
Email: bryan.yackel@alaska.gov	Email: ali.turker@awwu.biz

The real property which is the subject of this Agreement (hereinafter the Property) is located within the Anchorage Recording District and the Anchorage Water Utility Service Area as certificated by the Regulatory Commission of Alaska, and is described as:

PROVIDENCE-CHESTER CREEK SUBDIVISION
Tract C-2
(Plat 2004-169, SW1734)

This legal description is taken from the plat 2004-169 for the subdivision. See attached map for approximate location of Property.

Section 1 The Project.

- A.

The Developer shall provide a complete water distribution system to serve the Property in conformance with the Water Master Plan adopted by the Municipality. The water system shall include all water facilities necessary to provide water service to each lot and/or parcel and shall make adequate fire protection available throughout the Property as determined by the Municipal and or State Fire Marshal.
- B.

The Developer shall design, construct, and install water mains from the Property to the Municipality's existing water system. The Developer shall pay the entire cost of constructing the water system to serve the Property. If the Municipality requires the Developer to oversize the water mains, the Municipality shall reimburse the Developer the difference between the cost of pipe and fittings actually required to serve the

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Property and that which was installed. The total cost of constructing water facilities under this Agreement is estimated to be as indicated in Section 2 below. This estimate shall be used to compute the project cost deposit as required by Paragraph 2.03 of Article II of this Agreement.

- C. In the event the proposed water distribution system to be constructed under the terms of this Agreement serves other parcels of land which are not owned by the Developer, then no construction may commence until one of the following acts has been completed: [AS 42.05.385 (a) through (e)]
1. The Developer submits a signed, notarized statement to Anchorage Water and Wastewater Utility (AWWU), waiving all claims for future reimbursement from AWWU for providing water service to such other parcels of land.
 2. The owner of record of each such other parcel of land served, signs a notarized statement acknowledging his liability to pay AWWU an assessment if his parcel connects to the proposed water main within three (3) years from the date AWWU accepts the water main, and indicating his non-objection to the construction of the proposed water main.
 3. The Anchorage Municipal Assembly approves the construction of the proposed water main by authorizing the Municipality to execute this Agreement.

Section 2 Estimated Project Costs.

The Estimated Costs itemized below are predicated on the estimates provided by the Developer or his agents.

- A. Developer's Estimated Cost:
- | | |
|--|---------------|
| Estimated construction cost of approximately <u>60</u> linear feet of <u>8-</u>
<u>inch</u> PVC water distribution system and facilities: | T.B.D. |
| Estimated consultant engineering fees and other related costs (i.e.
design, soils, survey, project administration, inspection, etc.): | T.B.D. |
| Estimated Municipal project administration and inspection costs
(refer to Article 2.03 of this agreement): | T.B.D. |
| TOTAL ESTIMATED DEVELOPER'S COST: | T.B.D. |
- B. Municipality's Estimated Share of Oversizing Cost: N/A
- C. **TOTAL ESTIMATED PROJECT COST:** **T.B.D.**

Section 3 Water Assessment Charges.

The Developer agrees to pay the Municipality a per square foot assessment charge in lieu of water improvement district assessments for the Developer's benefit of currently existing water mains adjacent to or within the Property.

- A. The Developer shall pay, where applicable, an assessment charge of \$0.00* per square foot of assessable property, as its share of the cost of constructing the currently existing water mains adjacent to or within the Property. Said assessment charges shall become due and payable no later than ninety (90) days after the later of (i) the date on which the water main constructed under the terms of this Agreement passes a substantial completion inspection by the Utility and is available for customer service, or (ii) the date of this Agreement or an Amendment to this Agreement which first sets forth the assessment. Water assessment charges not paid in full by the date due shall bear

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interest from the date the first installment is due at an annual interest rate equal to the effective annual interest rate of the last bonds sold by the Anchorage Water Utility and, in addition, shall pay a collection charge as outlined in section 3 (H) herein. Water assessment charges shall be paid in installments as follows:

<u>AMOUNT OF ASSESSMENT</u>	<u>INSTALLMENT SCHEDULE</u>
Less than \$500	1 lump sum payment
\$500 or more but less than \$1,000	2 equal annual installments
\$1,000 or more but less than \$2,500	5 equal annual installments
\$2,500 or more but less than \$5,000	10 equal annual installments
\$5,000 or more but less than \$7,500	15 equal annual installments
\$7,500 or more but less than \$15,000	20 equal annual installments
\$15,000 or more but less than \$25,000	25 equal annual installments
Amounts over \$25,000	30 equal annual installments

- B. **Not Used.**
- C. The individual lots, which shall accrue an assessment charge, are as follows:

PROVIDENCE-CHESTER CREEK SUBDIVISION

(Plat 2004-169, SW1734)

<u>TRACT</u>	<u>TAX CODE</u>	<u>RATE</u> <u>(\$/Sq.Ft.)</u>	<u>ASSESSMENT</u> <u>CHARGES</u>
C-2**	00420212	Previously levied under the Capital Improvement Project (CIP), Goose Lake Water Improvement Project No.: A 109.70.	

NOTE*: Water assessments will be charged at \$0.00 per square foot of benefited property. Developer will contribute main in lieu of assessments.

NOTE:** Post levy of assessments, Tract C-2 was platted away from the water main built under the Capital Improvement Project, Goose Lake Improvement Project No.: A 109.70.

- D. **Not Used.**
- E. All charges payable by the Developer under this Agreement are a lien upon the Property. In addition to pursuing any other remedy provided by law, the Municipality may recover any past due charges in the same manner as delinquent special assessments are collected; that is, by foreclosure and sale of the Property. The Municipality shall release this lien upon the Property, or any lot or parcel within the Property, when the charges for the Property, or the charges for any lot or parcel within the Property, have been paid.
- F. All outstanding charges shall be paid when the Developer transfers the Property, or any lot or parcel within the Property, to another; provided, however, that if for any reason such payments are not made at the time of transfer; the charges shall be billed to the Owner of record of said Property at the time of billing.
- G. Upon the Developer's full performance of all its obligations under this Agreement, that portion of the Property considered under the provisions of the Anchorage Water Utility Tariff to be legally served with water will be omitted from any future water improvement districts which may be formed to provide water service to adjacent properties.

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- H. In addition to all other charges, the Developer will pay an annual collection charge pursuant to AMC 19.20.265 for all billable assessment accounts. The amount of such annual charge shall be the same as that established for special assessments for water service.

Section 4 Reimbursement for Water Service to Other Properties.

- A. After the Municipality accepts the water system constructed by the Developer under this Agreement, other parcels of land, which are benefited by the water system but not referred to in this Agreement as the Property, may request water service. During the first three (3) years immediately following the completion of a successful final inspection of the water system constructed by the Developer, and upon receipt of a request for water service to such other parcels, the Municipality shall initiate action to collect a levy upon connection assessment from the connecting parcels. The levy upon connection assessment shall be determined in accordance with the Water Utility Tariff in effect on the date the benefited parcel is connected to the water system, and shall be reimbursed to the Developer as authorized by that Tariff. No reimbursement shall be due if the Developer fails to provide the Anchorage Water Utility with a certified project cost statement and an as-built Mylar drawing of the water system constructed within 180 days of the date a successful final inspection was performed on the water distribution system constructed. Parcels of land submitting a request for water service following completion of the three (3) year period mentioned above shall be granted permission to connect to the water system constructed by the Developer without paying a levy upon connection charge and without any reimbursement to the Developer. Parcels of land to be benefited by the construction of this water system include:

NONE

- B. The proposed service to the above parcels is based on a preliminary routing of the water distribution system and shall be revised, if necessary, in accordance with as-built construction. The above specified parcels are inserted for planning purposes only.
- C. It is understood that in no case shall the Municipality reimburse the Developer until such time as the benefited property owner makes payment of, or enters into a formal agreement to make payment of, his water levy upon connection charges to the Municipality.

Section 5 Special Provisions.

Section Not Used.

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ARTICLE I

GENERAL PROVISIONS

1.01 Application of Article.

Unless this Agreement expressly provides otherwise, all provisions of this Article apply to every part of this Agreement.

1.02 Permits, Laws and Taxes.

The Developer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the Developer under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Developer shall pay all taxes pertaining to its performance under this Agreement.

1.03 Relationship of Parties.

Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer or any contractor or subcontractor of the Developer be deemed an agent, employee or partner of the Municipality, or otherwise associated with the Municipality other than, in the case of the Developer, as an independent contractor. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees or partners of the Municipality, or otherwise associated with the Municipality other than, in the case of the Developer, as an independent contractor. The Developer shall notify all its contractors and subcontractors of the provisions of this Paragraph.

1.04 Engineer's Relation to Municipality.

Notwithstanding Paragraph 2.01, of Article II, or any agreement whereby the Municipality reimburses the Developer's engineering costs; an engineer retained by the Developer to perform work under this Agreement shall not be deemed an agent, employee, partner or contractor of the Municipality, or otherwise associated with the Municipality.

1.05 Developer's Responsibility.

The Developer shall be solely responsible for the total performance of all terms, covenants and conditions of this Agreement notwithstanding the Developer's delegation to another of the actual performance of any term, covenant or condition hereof.

1.06 Not Used.

1.07 Disclaimer of Warranty.

Notwithstanding this Agreement or any action taken by any person hereunder; neither the Municipality nor any municipal officer, agent or employee warrants or represents the fitness, suitability, or merchantability of any property, plan, design, material, workmanship or structure for any purpose.

1.08 Cost of Documents.

All plans, reports, drawings or other documents that this Agreement requires the Developer to provide the Municipality shall be furnished at the Developer's expense.

1.09 Assignments.

- A. Except insofar as subparagraph B of this Provision specifically permits assignments, any assignment by the Developer of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by the Developer to assign any part of its interest or delegate any duty under this Agreement

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shall constitute a default entitling the Municipality to invoke any remedy available to it under Paragraph I.10 of this Article.

- B. The Developer may not assign its interest or delegate its duties under this Agreement unless expressly permitted in writing by the Municipality. Specific to this agreement the Municipality permits the Developer to delegate those responsibilities and duties expressed for design and engineering to DOWL. Additionally, the Municipality permits the Developer to delegate those responsibilities and duties expressed for physical construction of the improvements to an independent contractor and/or contractors to be determined at a later date.

1.10 Default: Municipality's Remedies.

- A. The Municipality may declare the Developer to be in default:
1. If the Developer is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed on account of insolvency, takes advantage of any law for the benefit of insolvent debtors; or
 2. If the Developer has failed in any measurable way to perform its obligations under this Agreement, provided the Municipality gives the Developer notice of the failure to perform and the Developer fails to correct the failure within thirty (30) days of receiving the notice; or, if the failure requires more than thirty (30) days to cure, the Developer fails within 30 days of receiving the notice to commence and proceed with diligence to cure the failure.
- B. Upon a declaration of default the Municipality may do any one or more of the following:
1. Terminate this Agreement without liability for any obligation maturing subsequent to the date of the termination.
 2. Perform any act required of the Developer under this Agreement, including constructing all or any part of the improvements, after giving seven (7) day notice in writing to the Developer. The Developer shall be liable to the Municipality for any costs thus incurred. The Municipality may deduct any costs thus incurred from any payments then or thereafter due the Developer from the Municipality, whether under this Agreement or otherwise.
 3. Exercise its rights under any performance or warranty guarantee securing the Developer's obligations under this Agreement.
 4. Pursue any appropriate judicial remedy including but not limited to an action for injunction and civil penalties pursuant to the Anchorage Municipal Code.

1.11 Non-Waiver.

The failure of the Municipality at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of the Agreement or any part hereof, or the right of the Municipality thereafter to enforce each and every provision hereof.

1.12 Effect of Standard Specifications and AWWU Design and Construction Practices Manual.

The Municipality of Anchorage Standard Specifications (MASS) and the Anchorage Water and Wastewater Utility Design and Construction Practices Manual in effect at the time this Agreement is executed, as well as Title 18 of the Alaska Administrative Code and the State of Alaska criteria adopted for the design of water and/or sanitary sewer facilities, shall be the

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minimum standards for performance under this Agreement unless otherwise specifically provided in writing. Definitions or other provisions in the standard specifications describing the relationships and responsibilities of parties to Municipal construction contracts do not apply herein to the extent that they conflict with any provision of this Agreement.

1.13 Amendment.

The parties may amend this Agreement only by mutual written agreement, which shall be attached hereto.

1.14 Jurisdiction: Choice of Law.

Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The laws of the Municipality of Anchorage and State of Alaska shall govern the rights and duties of the parties under this Agreement.

1.15 Definitions.

Unless this Agreement expressly provides otherwise, the following definitions shall apply herein:

- A. "ACCEPTANCE" by the Municipality means a determination that an improvement meets municipal construction standards, and does not refer to accepting a dedication of the improvement by the Developer.
- B. "AS-BUILT DRAWINGS" means the plan and profile reproducible mylar drawings, verified by a registered professional engineer, to be the actual horizontal and vertical alignment, distance, grade, amounts, etc. depicting the true location of utility improvements actually constructed.
- C. "AWWU" means the Anchorage Water and Wastewater Utility.
- D. "CERTIFIED COST STATEMENT" means an itemized statement provided to AWWU of costs certified by the Developer to be the actual and final costs of water and/or sanitary sewer facilities constructed. A copy of the final pay estimate and/or other applicable billings sufficient to verify all costs shall be included. A form to be used when reporting certified costs shall be provided by the Municipality.
- E. "AWWU DESIGN AND CONSTRUCTION PRACTICES MANUAL" are the Utility minimum standards for design of water and sanitary sewers in the Municipality of Anchorage.
- F. "FINAL INSPECTION" means that inspection performed by the Municipality after completion of all improvements required of the Developer under the terms of this Agreement. All improvements must satisfactorily complete a final inspection before placing any part of the improvements under warranty.
- G. "IMPROVEMENTS" means work which the Developer is required to perform under the terms of this Agreement.
- H. "MUNICIPALITY" for the purposes of administering this Agreement, means the General Manager of the Anchorage Water and Wastewater Utility, or his designee.
- I. "RECORD DRAWINGS" means the plan and profile reproducible Mylar drawings, verified by a registered professional Engineer to be the horizontal and vertical alignment, distance, grade, amounts, etc. as reflected in survey notes, contractor's notes, line and grade notes, and engineer's notes, and as relates to the basic control rather than the construction stake line. When record drawings are submitted the engineer shall identify the contractor's name and address; a reference to the line and

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grade survey book number; the engineering firm's name and address, and a reference to the engineering survey book number. Record drawings will only be accepted as a substitute for as-built drawings if the Developer's engineer notes which portion of the drawing information was provided by the contractor, which by the line and grade person, and which by the engineer.

- J. "STANDARD SPECIFICATIONS" for purposes of this agreement, means those construction specifications maintained and periodically reviewed and modified by the Municipality of Anchorage which are published as the Municipality of Anchorage Standard Specifications.
- K. "SUBSTANTIAL COMPLETION" means that state or event at which the improvements have passed requisite tests and inspections, performed or witnessed by the Municipality of Anchorage, and are available for the beneficial use for the purpose and in the manner intended by the agreement document and approved plans.
- L. "WARRANTY INSPECTION" means that inspection performed by the Municipality at the end of the two-year warranty period. All improvements must satisfactorily complete a warranty inspection before final acceptance of the improvements by the Municipality.
- M. "WATER/SANITARY SEWER EXTENSION" means that water or sanitary sewer line which reaches from the water or sanitary sewer service connection to the structure and is generally located on private property.
- N. "WATER/SANITARY SEWER SERVICE CONNECTION" means the pipe and appurtenances required to connect an individual property or facility to the water or sanitary sewer main and which terminates at the property line or easement limit and shall not include the necessary further extension of the water or sanitary sewer system onto private property.

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ARTICLE II

PREREQUISITES TO CONSTRUCTION

The Developer shall not obtain permits for construction of the improvements or commence construction until the requirements of Paragraphs 2.01 through 2.08 below have been met.

2.01 Engineer.

- A. The Developer shall retain an Engineer registered as a Professional Engineer under the laws of the State of Alaska to design and administer the construction of the improvements, including preparing plans and specifications, inspecting and controlling the quality of the work described herein in accordance with the Municipality's recommended procedures for consulting engineers. If this agreement requires the Municipality to reimburse the Developer for engineering costs, the professional fee schedule of the Engineer shall be attached as an appendix hereto.

The Developer has retained BRAD DOGGETT, P.E., License 10360, license expiration date, 12/31/2017.

Firm: DOWL
Mailing Address: 4041 B Street
Anchorage, Alaska 99503
Telephone No.: (907) 562-2000
Fax No.: (800) 865-9847
E-Mail: bdoggett@dowl.com

- B. The Engineer hired by the Developer shall be retained so as to be available throughout the entire two-year warranty period to effect, through the contractor and/or the Developer, correction of all warranted conditions. A letter to this effect shall be signed by both the Developer and the Engineer and shall be filed with the Anchorage Water and Wastewater Utility before a Notice to Proceed with the construction of this project is approved.
- C. The Developer shall inform the Municipality of the name and mailing address of the Engineer he has retained to perform the duties described in paragraphs A and B above and agrees that notice to the Engineer at the address so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the Municipality of any change in the information required under this Paragraph.

2.02 Plans and Specifications.

- A. The Developer shall submit design drawings in accordance with the guidelines of AWWU's Design and Construction Practices Manual for Water Improvements. The Municipality of Anchorage Water and Wastewater Utility (AWWU) reserves the right to return incomplete drawings (less than 85% complete) to the Developer for completion and resubmittal.
- B. The Developer shall submit to the Municipality proof that an Engineer has been retained to perform the duties described in Paragraph 2.01 of Article II.
- C. If the Municipality requires soil tests or other tests pertaining to the design of improvements, the Developer shall submit reports of the test results with the plans and specifications.
- D. The Municipality shall approve the plans and specifications as submitted or indicate to the Developer how it may modify them to secure approval within three weeks from either: (1) the submission of all plans and specifications for the improvements, or (2) the payment of the deposit required upon plan submission under Paragraph 2.03 below, whichever occurs later.

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2.03 Project Cost Deposit.

The Developer shall deposit with the Municipality the amounts required under Section 24.20.040 of the Anchorage Municipal Code and Paragraphs 3.01.C.5 and 3.03.C of this Agreement. The Municipality does not guarantee that final billings will be in accordance with amounts stated in this agreement, or orally given estimates. It is expressly understood by the Developer that a Developer shall pay the Municipality's actual cost associated with all work performed under this agreement. The Municipality's cost shall include, but is not limited to, agreement administration, plan checking, field surveillance, testing, final inspections, warranty inspections and overhead.

2.04 Liability Insurance.

The Developer shall provide proof that it has acquired the insurance required under the Standard Specifications of the Municipality in effect at the time of the execution of this Agreement, in the form prescribed in those Standard Specifications, or, if the Developer has engaged a prime contractor to perform the work under this Agreement, proof that the prime contractor has acquired such insurance, naming the Developer as an insured.

2.05 General Standard of Workmanship.

The Developer shall construct all improvements in accordance with plans, specifications and contracts approved by the Municipality and with the terms, covenants and conditions of this Agreement. The Developer shall not incorporate any material or equipment into an improvement unless the Municipality has approved its use. Unless the Municipality specifically agrees otherwise in writing, all materials, supplies and equipment incorporated into an improvement shall be new.

2.06 Surveyor.

All surveys required for the completion of improvements under this Agreement shall be made by a person registered as a Professional Land Surveyor under the laws of the State of Alaska.

2.07 Required Reporting.

A. Quality Control:

1. Prior to the preconstruction conference, the Developer shall submit a certified Quality Control Plan for review and approval which shall include the following:
 - a. Name and telephone number(s) of the Engineer;
 - b. Name and telephone number(s) of any individual(s) under the Engineer's direct supervision who will be conducting field inspections;
 - c. Engineer's review and signature procedure of field inspections performed by personnel under the Engineer's direct supervision;
 - d. Procedure(s) to be used to note and correct construction deficiencies;
 - e. Procedure(s) to be used to coordinate pipe testing with AWWU;
 - f. Procedure(s) to be used to comply with minimum testing requirements specified in the Municipality of Anchorage Standard Specifications (MASS);
 - g. Procedure(s) to be used to request final inspections by AWWU.
2. The Developer shall submit written inspection reports on a weekly basis of material testing results and summaries of daily activities to the Anchorage Water and Wastewater Utility. Copies of materials testing results shall be attached to inspection reports. Weekly reports shall be submitted no later than 4:00 PM on Tuesday following each project work week.

Failure to submit weekly inspection reports shall be cause for AWWU to issue a stop work order under the provisions of Paragraph 2.10.A of this Agreement.

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Engineer's inspection shall include, but not necessarily be limited to, verification of the following:

- a. adequacy of pipe foundation material;
 - b. compliance with approved vertical and horizontal pipe alignment;
 - c. bedding and backfill material type, quality, placement and density;
 - d. system component material by type, size and installation (for example pipe, valves, fittings, manholes, fire hydrant assemblies, pipe restraints, curb stops, corporation stops, polyethylene encasement of pipe, etc.);
 - e. compliance with required pipe tests;
 - f. compliance with any and all applicable permit stipulations; and
 - g. observed deficiencies during inspection or testing; actions taken to correct deficiencies; and notes of discussion with AWWU pertaining to the deficiencies.
3. The Developer shall coordinate testing and inspections with the Anchorage Water and Wastewater Utility and provide advance notice in accordance with Article 2.5 Section 60.02 (Water) of MASS for all tests and inspections to be witnessed by the Utility.
- B. Expressed or implied approval by the Municipality of any report or inspection shall not authorize any deviation from approved plans and specifications or from the terms of this Agreement. If during the course of construction field conditions warrant changes to the approved plans, the Developer shall obtain written concurrence from AWWU prior to implementing these changes.

2.08 Guarantee of Improvements.

- A. In order to guarantee the construction of this Project, per contract number Contract between Developer & Contractor, Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office has secured a performance and payment Bond No. _____, in the amount of _____ Dollars (\$_____). Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office is the Obligee of the bond, AWWU is a department of the Municipality of Anchorage, Contractor Name is the Principal, and Insurance/Bonding Company is the Surety.

The Developer executes the improvement under this Agreement as part of the AWWU Project Name Project, per contract number Contract between Developer & Contractor. The Developer will notify AWWU of any claim, action or demand on the bond. Upon any demand on the bond the Developer will dedicate, an amount equal to or greater than the estimated total project cost as reflected in Section 2C of this Agreement plus project overrun allowances as outlined in AMC 21.08.060.G.2 for the completion of improvements under this Agreement. If the Principal fails to meet the terms of this agreement upon any claim, action or demand on the bond, then The Developer will provide AWWU with the funding necessary for the completion of the improvement required by this Agreement.

The guarantee of improvements will not be released by the Alaska Mental Health Trust Authority, by and through the Alaska Mental Health Trust Land Office until all improvements required by this Agreement have been completed by the Developer; the improvements inspected and accepted under warranty by AWWU, and an acceptable Improvement Warranty posted as required by Paragraph 3.04 of Article III of this Agreement.

- B. The total value of the guarantee of improvements provided shall be equal to or greater than the estimated total project cost as reflected in Section 2C of this Agreement plus project overrun allowances as outlined in AMC 21.08.060.G.2. The guarantee of

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improvements will not be released by the Municipality until all improvements required by this Agreement have been completed by the Developer; the water and/or sanitary sewer improvements inspected and accepted under warranty by the Municipality, and an acceptable warranty guarantee posted as required by Paragraph 3.04 of Article III of this Agreement.

2.09 Surveillance.

- A. AWWU may monitor the progress of the improvements and the Developer's compliance with this Agreement, and perform any inspection or test which it deems necessary to determine whether the improvements conform to this Agreement.
- B. If the Developer fails to notify AWWU of inspections, tests and construction progress as required by Paragraph 2.07 above, the Utility may require, at the Developer's expense, retesting, exposure of previous stages of construction, or any other steps which the Utility deems necessary to determine whether the improvements conform to this Agreement.
- C. Any monitoring, tests or inspections that AWWU orders or performs pursuant to this Paragraph are solely for the benefit of the Utility. AWWU does not undertake to test or inspect the improvements for the benefit of the Developer or any other person.

2.10 Stop Work Orders.

- A. If AWWU determines that there is a substantial likelihood that the Developer will fail to comply with this Agreement, or if the Developer does fail to comply, the Utility may stop all further construction of improvements by posting a stop work order at the site of the nonconforming construction and notifying the Developer or his Engineer of the order.
- B. A stop work order shall remain in effect until the Anchorage Water and Wastewater Utility approves:
 - 1. Arrangements made by the Developer to remedy the nonconformity; and
 - 2. Assurances by the Developer that future nonconformities will not occur.
- C. The issuance of a stop work order under this Paragraph is solely for the benefit of the Municipality. The Municipality does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this Paragraph shall be grounds for an action or claim against the Municipality, or for an extension of time to perform the work.
- D. The Developer shall include in all contracts for work to be performed or materials to be used under this Agreement the following provision:

The Municipality of Anchorage, pursuant to a Water Main/Sanitary Sewer Extension Agreement on file with AWWU and incorporated herein by reference, has the authority to inspect all work or materials under this contract, and to stop work in the event that the work performed under this contract fails to comply with any provision of the Water Main/Sanitary Sewer Extension Agreement. In the event that a stop work order is issued by the Municipality of Anchorage, the contractor immediately shall cease all work, and await further instruction from the Developer.

2.11 Specified Completion Date.

All improvements required under this Agreement shall be completed within not less than two (2) years nor more than three (3) years from the date of execution hereof (AMC 21.08.060.C).

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ARTICLE III

ACCEPTANCE OF IMPROVEMENTS

3.01 Prerequisites to Acceptance.

The Anchorage Water and Wastewater Utility shall not finally accept the improvements constructed under the terms of this Agreement until all the following requirements have been met.

A. As-Built or Record Drawings.

The Developer shall submit record drawings in accordance with the procedures set forth in Section 50.00 RECORD DRAWINGS (ASBUILTS) of the Anchorage Water and Wastewater Utility's Design and Construction Practices Manual for Sanitary Sewer and Water Improvements. The as-built or record drawings shall be submitted to the Anchorage Water and Wastewater Utility within one hundred - eighty days (180) days following successful completion of a final inspection of this project by Utility inspectors. The as-built or record drawings and blue-line copies shall be certified to represent accurately the improvements as actually constructed and shall be signed by a Professional Engineer, registered under the laws of the State of Alaska. Failure to submit approved as-built or record drawings within this 180 day period shall be sufficient cause for the Utility to withhold reimbursement to the Developer for providing water/sewer service to adjacent properties. The project warranty period for the improvements constructed under the terms of this Agreement will not commence until after the as-built or record drawings have been received and approved by AWWU. The Developer shall submit a copy of the post construction survey notes as well as the Engineer's "during construction" inspection notes to AWWU along with the as-built or record drawings. See paragraph 1.15 for a definition of as-built and record drawings.

B. Certified Cost Statement.

The Developer shall provide a certified cost statement to AWWU within 180 days of completion of a successful final inspection of the water/sanitary sewer lines by the Utility. The certified cost statement shall be notarized and submitted on a form provided by the Anchorage Water and Wastewater Utility and shall consist of the total project costs including all labor, material, equipment, engineering inspection and all other direct or indirect costs incurred. A copy of the final pay estimate and/or other applicable billings or invoices sufficient to verify all costs shall be included. Failure to submit an approved certified cost statement within this 180 day period shall be sufficient cause for the Utility to deny reimbursement to the Developer for providing water/sanitary sewer service to adjacent properties. The project warranty period for the improvements constructed under the terms of this Agreement will not commence until after the certified cost statement has been received and approved by AWWU.

C. Inspection and Testing.

1. During the course of construction of the improvements required by this Agreement, or upon receiving notice from the Engineer that the Developer has completed the improvements, AWWU shall schedule an inspection of the improvements. The Utility may inspect the improvements and any related work in dedicated easements or rights-of-way. Prior to scheduling a final inspection with Anchorage Water and Wastewater Utility personnel, the Developer, the Engineer and the Contractor shall perform a project inspection jointly and correct any deficiencies or discrepancies found.
2. AWWU shall inform the Developer in writing of any deficiencies in the work found during the course of its inspections.
3. At its own expense, the Developer shall correct all deficiencies found by the inspection performed under subparagraph 1 of this Paragraph. Upon receiving

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written notice that the deficiencies have been corrected, AWWU shall re-inspect the improvements, unless mutually agreed upon by the AWWU Engineer and the developer that additional time is necessary.

4. AWWU may continue to re-inspect the improvements until the Developer has corrected all deficiencies in the improvements.
 5. Most fire hydrants constructed require adjustment to meet finished grade. Only AWWU personnel are authorized to adjust fire hydrants. The Developer will be liable for the cost of the fire hydrant adjustment on the basis of time and materials expended. A deposit of \$500.00 cash shall be required for each hydrant planned for the project prior to the issuance of a notice to proceed with the construction of the project. AWWU will, after the adjustment, refund or bill the Developer for the difference between the deposits received and the actual cost of the adjustments. In lieu of the fire hydrant adjustment by AWWU, the Developer may elect to provide fire hydrant barrel sections which have been pre-assembled at the factory to a length determined and specified by the Engineer to conform to Municipality of Anchorage Standard Specifications (MASS). Height adjustment tolerances shall be in accordance with MASS Details #60-10 and 60-11. Any field departures from standard specification tolerances will require the fire hydrant adjustment by AWWU after the Developer posts the requisite deposit identified above. The Developer shall notify AWWU in writing of this election no later than the preconstruction conference scheduled for the project.
 6. Testing of the newly laid water main will be performed in accordance with the Municipal Standard Specifications and witnessed by Anchorage Water and Wastewater Utility personnel. This will consist of:
 - a. Flushing
 - b. Hydrostatic Pressure or Leakage Test
 - c. Sterilization
 - d. Removal of the Test Copper

These tests will be performed before water will be supplied for sale. A copy of the test results will be furnished to the Developer.
 7. A final inspection will be performed in accordance with the Municipal Standard Specifications and witnessed by Anchorage Water and Wastewater Utility personnel. This final inspection will take place after completion of all improvements and will consist of, but is not limited to, the following as appropriate:
 - a. Check Water Main Line Valve Boxes,
 - b. Check Hydrant Valve Boxes,
 - c. Check Hydrant for Operation and Installation,
 - d. Check Water Service Line Key Boxes,
 - e. Check Water Main Line Valve Box Markers,

A copy of the final inspection results will be furnished to the Developer itemizing any existing deficiencies. Upon notification that the deficiencies have been corrected, AWWU will perform another final inspection of those items.
 8. After a final inspection has revealed that all improvements and related work in dedicated easements and rights-of-way meet Municipal standards; after the Developer has furnished as-built or record drawings and a notarized certified cost statement; and after the Developer has deposited the fees required by AMC 24.20.040; AWWU shall notify the Developer that the improvements have been accepted under a two (2) year warranty period.
- D. This Project must pass substantial completion inspection by AWWU prior to AWWU issuing any on-property water and sanitary sewer service extension permits associated.

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- E. Deferral of Surface Improvements to Warranty Period.
1. Prior to final acceptance all construction must be inspected per Article III, Section 3.01.C above unless the Developer has acquired approval from the AWWU Engineering Division Director to defer certain improvements to the warranty period. Deferred items will only include surface improvements, that from construction sequencing prospective, benefit the overall project to be completed after water turn on, final platting, the completion of record drawings, the submittal of the certified cost statement, and submittal of improvement warranty.
 2. All improvements deferred must be inspected as part of the warranty inspection under Article III, section 3.07.A meeting the same requirements as the final inspection per Article III, Section 3.01.C.
 3. In order to defer surface improvements to the warranty period the developer must increase the improvement warranty guarantee referenced within Article III, Section 3.04.A. The increased amount shall be based on the MOA Average bid tab pricing to construct the items deferred.

3.02 Consequence of Acceptance of Improvements.

AWWU's final acceptance of the improvements constitutes a grant to the Utility of all the Developer's rights, title and interest in and to all the improvements, together with all easements, rights-of-way or other property interest not previously conveyed which are necessary to provide adequate access to the water and/or sanitary sewer improvements.

3.03 Developer's Warranty.

- A. The Developer shall warrant the design, construction, materials and workmanship of the improvements against any freezing, failure and/or defect in design, construction, material or workmanship which is discovered prior to the expiration of the two years warranty period from the date the Utility notifies the Developer of the acceptance of the improvements.
- B. The Developer shall correct any failure or defect covered by warranty within thirty (30) days of receiving notice of the failure or defect from AWWU. The Developer shall correct the failure or defect at its own expense and to the satisfaction of AWWU. AWWU shall inspect the corrected defect within 30 days of receiving written notice from the Developer.
- C. Prior to acceptance under warranty of this project, the Developer shall provide the Anchorage Water and Wastewater Utility with a cash deposit as required by Anchorage Municipal Code, Chapter 24.20.040.D to cover the Utility's costs incurred during the warranty period. This cash deposit is in addition to the warranty guarantee required by Paragraph 3.04 below. The amount of this deposit shall be as indicated below and shall be based on the Developer's certified cost statement for this project.

<u>CERTIFIED COSTS</u>	<u>REQUIRED DEPOSIT</u>
\$10,000.00 or less	\$500.00
\$10,000.01 to \$50,000.00	\$1,000.00
\$50,000.01 to \$150,000.00	\$1,500.00
Over \$150,000.00	\$2,000.00

- D. Any action or omission to take any action on the part of AWWU authorized by this Agreement including but not limited to operation or routine maintenance of the improvements prior to acceptance, or surveillance, inspections, review or approval of plans, tests or reports, shall in no way limit the scope of the Developer's warranty.

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3.04 Improvement Warranty.

- A. To secure the Developer's performance of the warranty under Paragraph 3.03 above, the guarantee of improvements provided by the Developer under Paragraph 2.08 of Article II shall remain in effect until the end of the warranty period, or until the Developer has furnished some other type of acceptable and adequate warranty guarantee as indicated in subparagraph B below.
- B. An acceptable Improvement warranty may be a corporate Surety Bond, a Cash Deposit, or a Letter of Credit in an amount equal to a percent of the project's approved certified cost statement as set forth below: (See AMC 21.08.060.I.2.b)

<u>Certified Project Cost</u>	<u>Percent to Secure Warranty</u>
Less than \$500,000	10.0%
\$500,000 to \$1,000,000	7.5%
More than \$1,000,000	5.0%

- C. The warranty period shall mean a period of two (2) years from and after acceptance under warranty of the improvements by AWWU. The Warranty period shall be extended if the Developer has not satisfied final acceptance requirements of the Subdivision agreement, if applicable, until the date of final acceptance. The warranty period shall be understood to imply prompt attention by the Developer to repair any defects that occur. In those instances where the water or sanitary sewer is constructed in conjunction with other public improvements, this warranty period shall run concurrently with the warranty of the last improvement to be constructed.

3.05 Municipality's Remedies Under Warranty.

- A. AWWU shall notify the Developer in writing upon its discovery of any failure or defect covered by the warranty required in Paragraph 3.03 above. The Utility shall notify the Developer before conducting any tests or inspections to determine the cause of the failure or defect, and shall notify the Developer of the results of all such tests and inspections.
- B. The Developer shall correct any failure or defect covered by warranty within thirty (30) days of receiving notice of the failure or defect from AWWU. The Developer shall correct the failure or defect at its own expense and to the satisfaction of AWWU. The failure or defect shall be presumed to be corrected to AWWU's satisfaction unless, within 30 days of notice by the Developer that the failure or defect has been corrected, AWWU gives Developer notice of any remaining failure or defect.
- C. If the Developer fails to correct the failure or defect within the time allowed by subparagraph B above, AWWU may correct the failure or defect at the Developer's expense. If the Developer fails to pay AWWU for the corrective work within thirty (30) days of receiving the Municipality's bill thereof, AWWU may pursue any remedy provided by law of this Agreement to recover the cost of the corrective work.
- D. AWWU reserves the right to immediately remedy, at the Developer's sole expense, any failure or defect determined by AWWU to be hazardous in the event the failure or defect, if not corrected promptly, jeopardizes life and/or property.

3.06 Conditions of Reimbursement.

If this Agreement requires AWWU to reimburse the Developer for all or part of the cost of an improvement, the reimbursement shall be conditioned upon the Developer's performance of all its obligations under this Agreement and upon the successful sale of bonds.

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3.07 Completion of Performance - Release of Warranty.

- A. AWWU shall perform a year-end warranty inspection of all improvements constructed prior to the end of the two-year warranty period, to determine whether all improvements and related work within the dedicated easements and rights-of-way continue to meet Municipality of Anchorage Standard Specifications (MASS). AWWU shall also insure the Developer has adjusted infrastructure to final grade in accordance with MASS. requirements associated with work done in conjunction with final acceptance of the Subdivision Agreement, if applicable. A copy of the Year End Warranty Inspection results will be furnished to the Developer itemizing any existing deficiencies.

After all deficiencies have been corrected to the satisfaction of AWWU, the Utility shall notify the Developer that the Anchorage Water and Wastewater Utility accepts full responsibility for all future maintenance of the public water and/or sanitary sewer facilities constructed under this Agreement. Prior to releasing any Guarantee of Improvements and/or deposit then in effect, pursuant to Paragraph 3.05 above, the Developer shall correct any failure or defect in the work revealed by the warranty inspection.

- B. Upon the Developer's satisfactory performance of all its obligations under this Agreement, AWWU shall execute a written statement acknowledging such performance and shall release any remaining security posted by the Developer under this Agreement.
- C. AWWU reserves the right to refuse to enter into an Agreement with any Developer for the future extension of water and/or sanitary sewer mains when said Developer fails or refuses to comply in a timely manner with the conditions of this Agreement or is currently delinquent in the payment of any account owed to AWWU.

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IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set forth above.

MUNICIPALITY OF ANCHORAGE:

DEVELOPER

By: _____
J. BRETT JOKELA, P.E.

General Manager
Anchorage Water and Wastewater Utility

By: _____

JOHN MORRISON
Executive Director
Alaska Mental Health Trust Authority,
by and through the Alaska Mental
Health Trust Land Office

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Alaska, duly sworn and commissioned as such, personally appeared J. BRETT JOKELA, P.E., known to me to be the General Manager of the Anchorage Water and Wastewater Utility that executed the foregoing instrument, and acknowledged that he executed said instrument as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal on the day and year first above written.

Notary Public in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared JOHN MORRISON, to me known to be the Executive Director of the Trust Land Office, on behalf of Developer named in the foregoing instrument, and he acknowledged to me that he had in his official capacity aforesaid executed the foregoing instrument as the free act and deed of the said trust for the uses and purposes therein stated.

WITNESS my hand and official seal on the day and year first above written.

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Notary Public in and for Alaska
My Commission Expires: _____

DRAFT

LEGAL DESCRIPTION

The description hereon was prepared by DOWL on March 27, 2015 at the request of Anchorage Water & Wastewater Utility (AWWU) for the purpose of describing a Sanitary Sewer Easement. The authorized user of this description is AWWU. Unauthorized use of this description is prohibited.

DOWL will not be responsible for errors committed by others if this description is not reproduced exactly as written below.

The author of this description is Stanley E. Ponsness, PLS Alaska No. 6714-S.

Parcel No. 2a

Tract 2B-1, U-MED Professional Park Subdivision

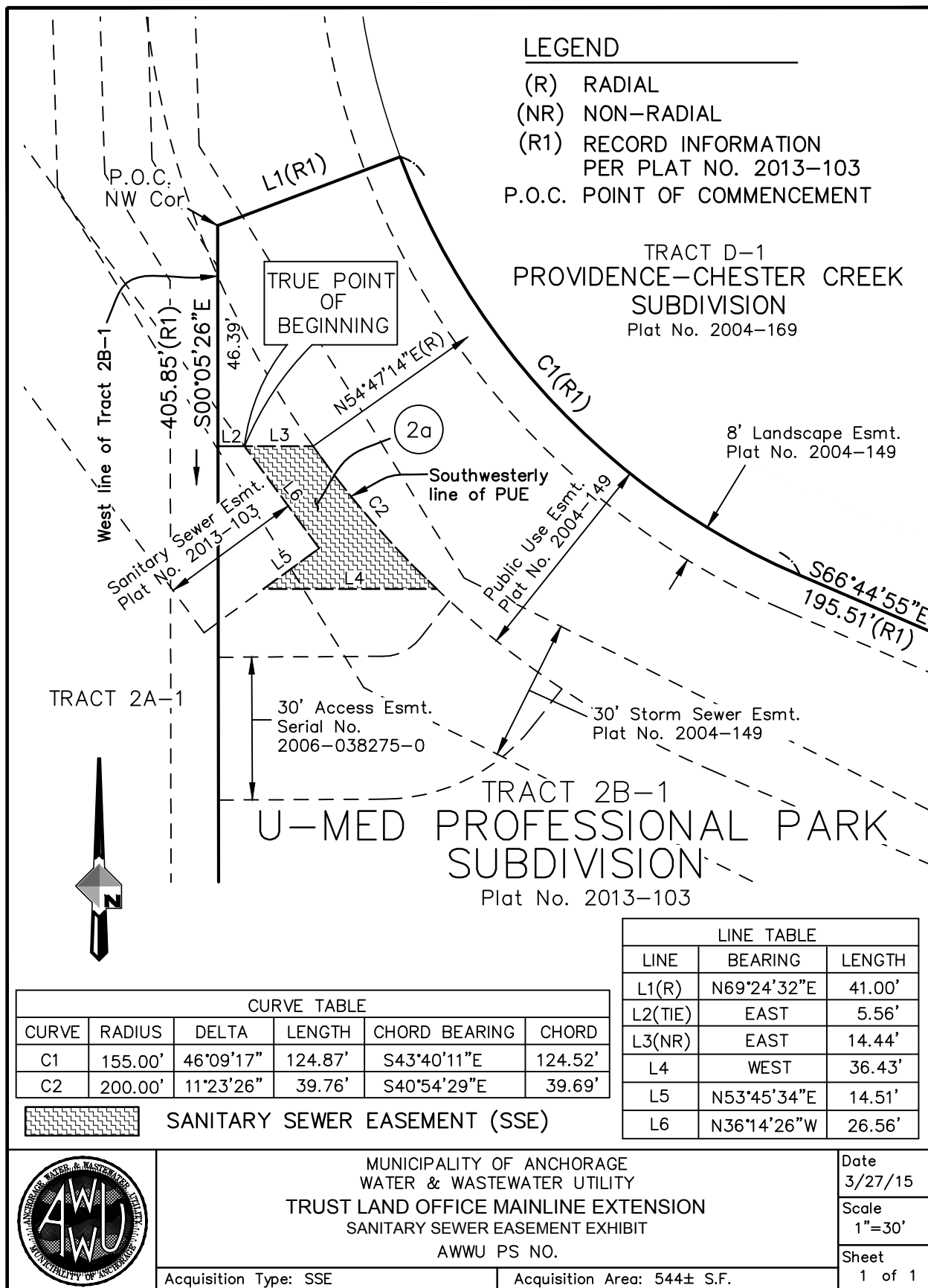
Plat No. 2013-103

The Basis of Bearing for this description is the west line of Tract 2B-1 as shown on the Plat of U-MED Professional Park Subdivision, filed as Plat No. 2013-103 in the Anchorage Recording District, Third Judicial District, State of Alaska and having a bearing of S00°05'26"E. Said bearing is derived from the Anchorage Bowl 2000 Coordinate System.

A portion of said Tract 2B-1, U-MED Professional Park Subdivision, filed as Plat No. 2013-103 in the Anchorage Recording District, Third Judicial District, State of Alaska being more fully described as follows:

Commencing at the northwest corner of said Tract 2B-1; thence on the west line thereof S00°05'26"E 46.39 feet; thence departing said line EAST 5.56 feet to a point on the northeasterly line of a sanitary sewer easement shown on Plat No. 2013-103, the True Point of Beginning for this description; thence EAST 14.44 feet to a point on the southwesterly line of public use easement as shown on said Plat No. 2013-103, said point being on a non-tangent curve concave to the northeast having a radius of 200.00 feet and whose center bears N54°47'14"E; thence southeasterly on said curve through a central angle of 11°23'26" 39.76 feet; thence departing said southwesterly line WEST 36.43 feet to a point on the southeasterly line of said sanitary sewer easement shown on said Plat No. 2013-103; thence on said line N53°45'34"E 14.51 feet; thence continuing on the northeasterly line thereof N36°14'26"W 26.56 feet to the True Point of Beginning, embracing and area of 544 square feet, more or less as calculated from said courses and distance.

Said easement is subject to an existing storm sewer easement.



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The author of this description is Stanley E. Ponsness, PLS Alaska No. 6714-S.

Parcel No. 3a

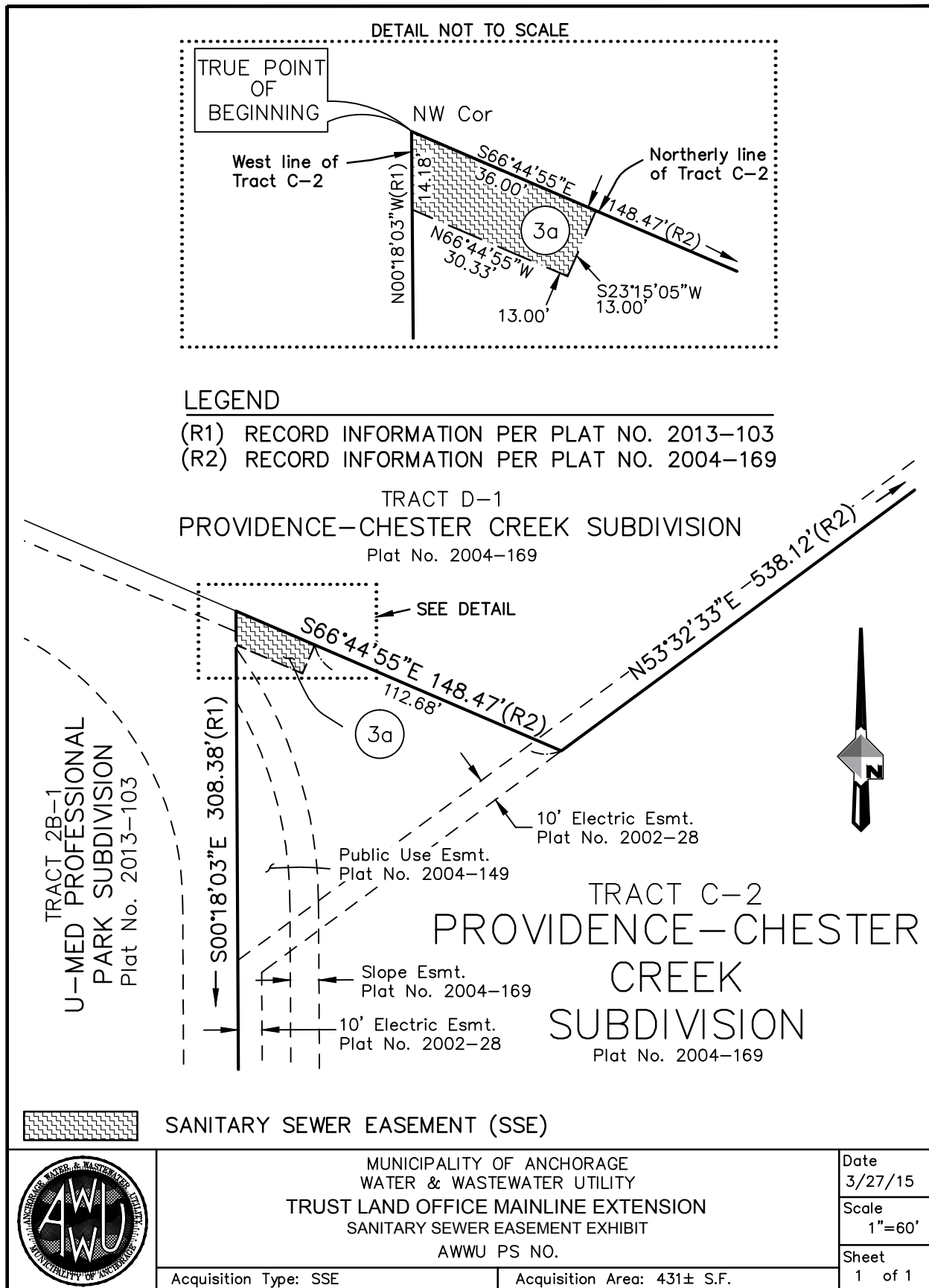
Tract C-2, Providence-Chester Creek Subdivision

Plat No. 2004-169

The Basis of Bearing for this description is the northerly line of Tract C-2 as shown on the Plat of Providence-Chester Creek Subdivision, filed as Plat No. 2004-169 in the Anchorage Recording District, Third Judicial District, State of Alaska and having a bearing of S66°44'55"E. Said bearing is derived from the Anchorage Bowl 2000 Coordinate System.

A portion of said Tract C-2, Providence-Chester Creek Subdivision filed as Plat No. 2004-169 in the Anchorage Recording District, Third Judicial District, State of Alaska, being more fully described as follows:

Beginning at the northwest corner of said Tract C-2, the True Point of Beginning for this description; thence on the northerly line thereof S66°44'55"E 36.00 feet; thence departing said line S23°15'05"W 13.00 feet; thence N66°44'55"W 30.33 feet to a point on the west line of said Tract C-2; thence on said line N00°18'03"W 14.18 feet to the True Point of Beginning, embracing and area of 431 square feet, more or less as calculated from said courses and distance.



LEGAL DESCRIPTION

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The author of this description is Stanley E. Ponsness, PLS Alaska No. 6714-S.

Parcel No. 4a

Tract D-1, Providence-Chester Creek Subdivision

Plat No. 2004-169

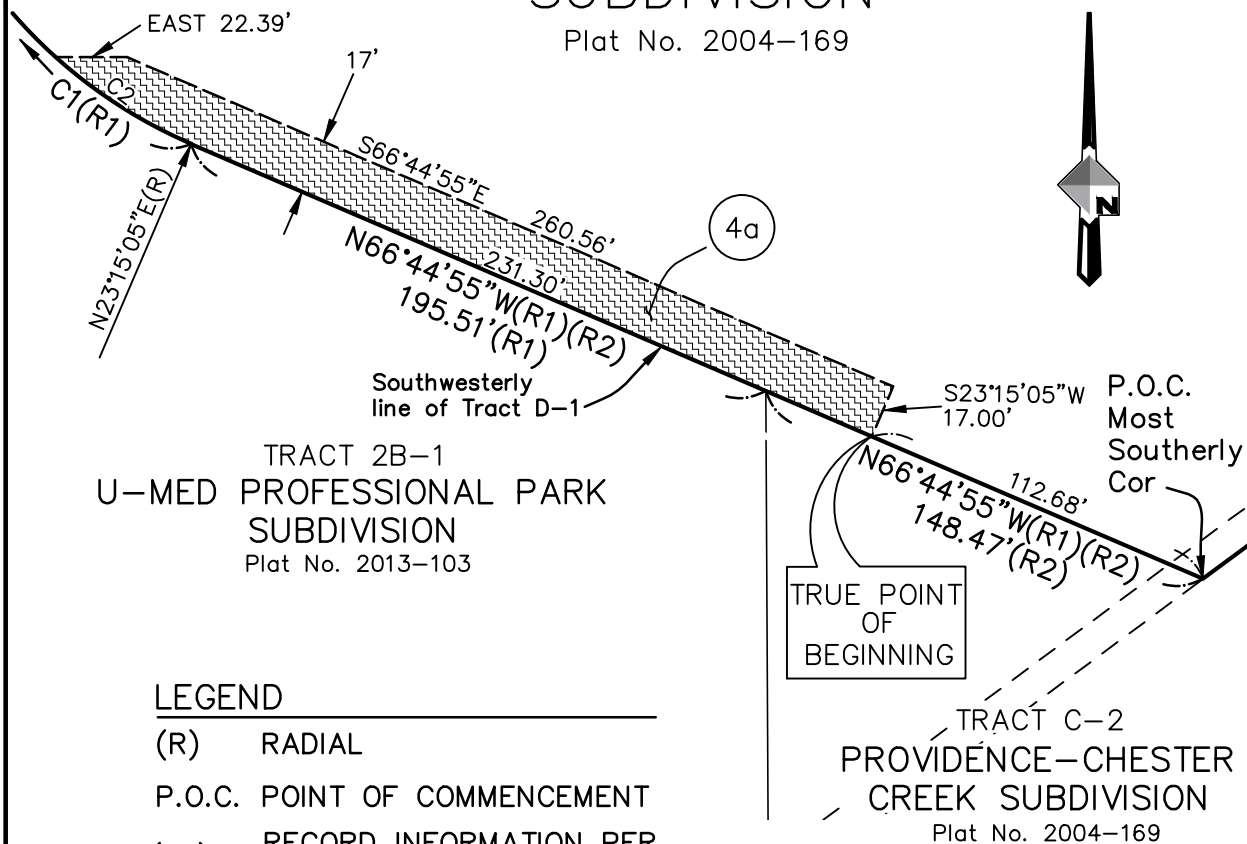
The Basis of Bearing for this description is the southerly line of Tract D-1 as shown on the Plat of Providence-Chester Creek Subdivision, filed as Plat No. 2004-169 in the Anchorage Recording District, Third Judicial District, State of Alaska and having a bearing of S66°44'55"E. Said bearing is derived from the Anchorage Bowl 2000 Coordinate System.

A portion of said Tract D-1, Providence-Chester Creek Subdivision filed as Plat No. 2004-169 in the Anchorage Recording District, Third Judicial District, State of Alaska, being more fully described as follows:

Commencing at the most southerly corner of said Tract D-1; thence on the southwesterly line thereof N66°44'55"W 112.68 feet to the True Point of Beginning for this description; thence continuing on said line N66°44'55"W 231.30 feet to the point of curvature of a curve concave to the northeast having a radius of 155.00 feet and whose center bears N23°15'05"E; thence continuing northwesterly on the southerly line of Tract D-1 and on said curve through a central angle of 18°40'26" 50.52 feet; thence departing said southwesterly line EAST 22.39 feet; thence S66°44'55"E 260.56 feet; thence S23°15'05"W 17.00 feet to the True Point of Beginning, embracing an area of 4,555 square feet, more or less as calculated from said courses and distances.

TRACT D-1 PROVIDENCE-CHESTER CREEK SUBDIVISION

Plat No. 2004-169



TRACT 2B-1
U-MED PROFESSIONAL PARK
SUBDIVISION
Plat No. 2013-103

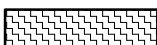
TRACT C-2
PROVIDENCE-CHESTER
CREEK SUBDIVISION
Plat No. 2004-169

LEGEND

- (R) RADIAL
- P.O.C. POINT OF COMMENCEMENT
- (R1) RECORD INFORMATION PER PLAT NO. 2013-103
- (R2) RECORD INFORMATION PER PLAT NO. 2004-169

CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD
C1	155.00'	46°09'17"	124.87'	S43°40'11"E	124.52'
C2	155.00'	18°40'26"	50.52'	N57°24'42"W	50.29'



SANITARY SEWER EASEMENT (SSE)



MUNICIPALITY OF ANCHORAGE
WATER & WASTEWATER UTILITY
TRUST LAND OFFICE MAINLINE EXTENSION
SANITARY SEWER EASEMENT EXHIBIT
AWWU PS NO.

Acquisition Type: SSE

Acquisition Area: 4,555± S.F.

Date
3/27/15

Scale
1"=60'

Sheet
1 of 1

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

☐ Northern Region
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2705 (PIC)

☒ Southcentral Region
550 W 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
(907) 269-8503

☐ Southeast Region
400 Willoughby, #400
Juneau, AK 99801
(907) 465-3400

**ADL 231306
ENTRY AUTHORIZATION
Mental Health Trust Sewer Line**

The Alaska Mental Health Trust Land Office (Grantee) is issued this Entry Authorization in accordance with the Regional Manager's Decision for ADL 231306 to use portions of the following described state land to install and survey improvements for a sanitary sewer line. Additional uses of state land may require separate authorization by the Division of Mining, Land, and Water in accordance with 11 AAC 96.020. Upon completion of the installation and survey activities and acceptance of a DNR-approved as-built survey of the proposed easement in accordance with all conditions and stipulations of this authorization, a Public Utility Easement shall be issued to the Anchorage Water and Wastewater Utility, as discussed in the Regional Manager's Decision for ADL 231306.


Meridian	Township	Range	Section(s)	Title
Seward	13N	3W	NW¼SW¼ of Sec. 28	BLM Patent #1193003, AK Doc #2004-096338-0 Anchorage District

This authorization is subject to compliance with the General and Special Stipulations described in **Attachment A**. This authorization shall expire on August 31, 2018 or as otherwise specified herein.

This authorization is not valid until signed by an approved DMLW representative.


Signature of approved DMLW representative

Easement Unit Manager 10/8/15
Title Date


Signature of Grantee or authorized representative

ACTING 9-25-15
Title Date

Grantee's Address: Mental Health Trust Land Office
2600 Cordova Street, Suite 100
Anchorage, AK 99503
Grantee's Phone: (907) 269-8658
Grantee's Email: Bryan.Yackel@alaska.gov


ATTACHMENT A

ADL 231306

Standard Stipulations

All activities performed under this authorization shall be conducted in accordance with the following stipulations. Where special stipulations differ from standard stipulations, the special stipulations shall control.

- 1) **Authorized Officer.** The Authorized Officer (AO) for the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Region Office (SCRO) is the Regional Manager. The AO may be contacted at 550 W. 7th Avenue, Suite 900 C, Anchorage, AK 99501-3577, or (907) 269-8503.
- 2) **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.
- 3) **Valid Existing Rights.** This authorization is subject to all valid existing rights in and to the land covered under this authorization. The State of Alaska makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number or nature of such valid existing rights.
- 4) **Reservation of Rights.**
 - a) 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.
 - b) The DMLW may require authorized concurrent users of State land to enter into an equitable agreement regarding concurrent use.
 - c) The AO reserves the right to modify these stipulations or use additional stipulations as deemed necessary. Grantee will be notified in writing prior to the implementation of any change in the terms or conditions exercised by the AO under this provision. Grantee will be afforded the opportunity to review and comment regarding the effect of any proposed change to this authorization. Failure of the Grantee to notify the AO of any change to current officers or addresses shall not be sufficient grounds to invalidate the AO's compliance with this notification process.
- 5) **Public Trust Doctrine.** This authorization is subject to the principles of the public trust doctrine which guarantees public access to and the right to use navigable and public waters and the land beneath them for navigation, commerce, fishing and other purposes. The AO reserves the right to grant other interests to the subject area consistent with the public trust doctrine.


Grantee Initials

- 6) **Alaska Historic Preservation Act.** The Grantee shall consult the Alaska Heritage Resources Survey at oha.ibs@alaska.gov or (907) 269-8723 so known historic, archaeological and paleontological sites may be avoided. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any State-owned historic, prehistoric (paleontological) or archaeological site without a permit from the Commissioner. Should any sites be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation shall be notified immediately at (907) 269-8721.
- 7) **Destruction of Markers.** All survey monuments, witness corners, reference monuments, mining claim posts, bearing trees, National Register of Historic Places plaques, interpretive panels and unsurveyed lease corner posts shall be protected against damage, destruction, or obliteration. The Grantee shall notify the AO of any damaged, destroyed, or obliterated markers and shall reestablish the markers at the Grantee's expense in accordance with accepted survey practices of the DMLW.
- 8) **Compliance with Governmental Requirements; Recovery of Costs.** The Grantee or entryperson shall, at its expense, comply with all applicable laws, ordinances, regulations, rules and orders, and the requirements and stipulations included in this authorization. Grantee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
- 9) **Other Authorizations.** The issuance of this authorization does not alleviate the necessity of the Grantee to obtain all other required authorizations for this activity. Failure to obtain said authorizations shall constitute a violation of this authorization, subject to action as described herein.
- 10) **Proper Location.** This authorization is for activities on State land managed by the DNR DMLW and does not authorize any activities on private lands, Federal lands, Native lands, municipal lands or lands which are owned or managed by other offices and agencies of the State of Alaska and/or the DNR. The Grantee is responsible for proper location on site.
- 11) **Public Access.** The Grantee shall not close landing areas or trails in the vicinity of this authorization. The ability of all users to use or access State land or public water must not be restricted in any manner.
- 12) **Limits of Access.** This authorization applies only to access within the project area, not access to the project area. No additional access trails or roads are allowed on State lands outside the authorized area without the express permission of the AO.
- 13) **Fire Prevention, Protection and Liability.** The Grantee and all entrypersons shall take all reasonable precautions to prevent and suppress forest, structure, brush and grass fires, and shall assume full liability for any damage to State land and State structures resulting from the negligent use of fire. The State of Alaska is not liable for damage to the Grantee's personal property and is not responsible for forest fire protection of the Grantee's activity. To report a wildfire call 911 or 1-800-237-3633.
- 14) **Fuel and Hazardous Substances.** No fuel or hazardous substances are to be stored on the subject parcel unless approved by a special stipulation. Prior written approval from the AO is required for a change in this restriction and may include additional stipulations.
- 15) **Spill Notification.**


Grantee Initials

- a) The Grantee or entryperson shall immediately notify the Department of Environmental Conservation (DEC) by telephone, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail, informing DEC of: any unauthorized discharges of oil to water, any discharge of hazardous substances other than oil; and any discharge or cumulative discharge of oil greater than 55 gallons solely to land and outside an impermeable containment area. 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 or entryperson shall report the discharge within 48 hours, and immediately afterwards send DEC a written notice by facsimile, hand delivery, or first class mail. 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. The posting of information requirements of 18 AAC75.305 shall be met. Scope and Duration of Initial Response Actions (18 AAC 75.310) and reporting requirements of 18 AAC 75, Article 3 also apply.

The Grantee or entryperson shall supply DEC with all follow-up incident reports. Notification of a discharge must be made to the nearest DEC Area Response Team during working hours: Anchorage (907) 269-3063, fax (907) 269-7648; Fairbanks (907) 451-2121, fax (907) 451-2362; Juneau (907) 465-5340, fax (907) 465-2237. The DEC oil spill report number outside normal business hours is (800) 478-9300.

- b) The Grantee or entryperson shall immediately notify the AO of any spill or discharge that is reported to DEC.
- c) The Grantee or entryperson shall immediately notify the AO of any pollution or explosion in the project area.

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

17) Site Disturbance. Unless specified herein:

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

18) Waste Disposal. All waste generated during construction activities under this authorization shall be removed or otherwise disposed of as required by State and Federal law. On-site waste disposal is prohibited, unless specified herein. "Waste" in this paragraph means all discarded matter, including, but not limited to, human waste, trash, garbage, litter, oil drums, petroleum, ashes and discarded equipment.

19) Inspections. Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspections. The Grantee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance and a final close-out inspection.


Grantee Initials

- 20) **Request for Data.** For purposes of information and review, the DMLW at any time during normal business hours, may require the Grantee to furnish data related to preconstruction or construction activities undertaken in connection with the project. The Grantee shall furnish the required data as soon as possible or as otherwise required under the terms of the authorization.
- 21) **Changes in Conditions.** Unforeseen conditions arising during construction of the project may make it necessary to revise or amend these stipulations. In this event, the AO and the Grantee will attempt to agree as to what revision or amendments shall be made. If they are unable to agree, the DMLW Director shall have final authority to determine those revisions or amendments.
- 22) **Improvements.** The Grantee or entryperson must obtain advance written approval from the AO prior to making any changes or improvements to the site or their operations not already included in this authorization.
- 23) **Fine Tuning.** Any changes in the alignment of the project area will require the prior written approval of the AO. The AO reserves the discretionary authority to require a re-determination of the State's best interest for any significant proposed changes.
- 24) **Amendment or Modification.** To amend or modify the uses allowed under this authorization, the Grantee shall submit a request in writing to the AO. Any amendment or modification must be approved by the AO and may require additional fees.
- 25) **Assignment.** This authorization may not be transferred or assigned without the prior written consent of the AO.
- 26) **Change of Address or Officers.** Any change of address or authorized officers appointed by the Grantee must be submitted in writing to the AO.
- 27) **Removal of Improvements and Site Restoration.** Upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall within 30 days remove all improvements from the area herein granted, except those owned by the State, and the site shall be restored to a condition acceptable to the AO. Should the Grantee fail or refuse to remove said structures or improvements within the time allotted, they shall revert to and become the property of the State; however, the Grantee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area.
- 28) **Violations.**
- a) Pursuant to 11 AAC 96.145, a person who violates a provision of an authorization issued under this chapter (11 AAC 96) is subject to any action available to the DNR for enforcement and remedies, including immediate revocation of the authorization, civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The DNR may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or 09.45.735 for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.
 - b) If a person responsible for an unremedied violation of 11 AAC 96 or a provision of an authorization issued under this chapter (11 AAC 96) applies for a new authorization from the DNR under AS 38.05.035 or 38.05.850, the DNR may require the applicant to remedy the violation as a condition of the new authorization, or to begin remediation and provide security under AS 38.05.860 and 11 AAC 96.060 to complete the remediation before receiving the new authorization. If a person who applies for a new


Grantee Initials

authorization under AS 38.05.035 or 38.05.850 has previously been responsible for a violation of this chapter or a provision of an authorization issued under this chapter, whether remedied or unremedied, that resulted in substantial damage to the environment or to the public, the DNR will consider that violation in determining the amount of the security to be furnished under AS 38.05.860 and 11 AAC 96.060 and may require the applicant to furnish three times the security that would otherwise be required.

Special Stipulations

- 29) **Indemnification.** Stipulation #2 is replaced by the following: In connection with the entry on or use of specified lands, subject to the limitations and provisions of AS 09.50.250-270 and AS 37.05.170, the Grantee shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the state, its agents, and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the state's negligence.
- 30) **Term.** This authorization shall remain valid for a term of 3 years from the effective date of the Regional Manager's Decision for ADL 231306, expiring on August 31, 2018, unless amended by written decision of the AO or as otherwise specified herein.
- 31) **Fees.** Land use fees for this authorization are waived in accordance with 11 AAC 05.010(c).
- 32) **Extension.** This authorization may be considered for extension if additional time is necessary to meet its requirements. The AO may review a written request to extend the authorization after payment of a \$100 application fee as required under 11 AAC 05.010. The written request must certify that there have been no changes to the approved development plan and be received at least 30 days before the authorization expiration date.
- 33) **Fuel Storage.** Fuel storage containers with a total combined capacity larger than 55 gallons shall not be placed within 100 feet from the ordinary high water mark for any water body. Containers which exceed a total combined capacity of 110 gallons must be stored within an impermeable diked area or portable impermeable containment structure capable of containing 110 percent capacity of the largest independent container. All containers must be clearly marked with the contents and the Grantee's name. 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. In the event of flooding, all fuel and storage containers must be relocated to higher ground (elevation) to lessen the potential for contamination or spills. SCRO also reserves the right to require permanent relocation of the fuel storage area if needed in the future. All fuel storage containers and associated materials not authorized under the final issued easement must be removed by the Entry Authorization expiration date.
- 34) **Ground Disturbance and Site Repair.** Grantee will refill holes, trenches, and surface depressions resulting from development or maintenance activities. 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.
- 35) **Maintenance of Infrastructure.** The State of Alaska assumes neither responsibility for maintenance of infrastructure constructed on State land nor liability for injuries or damages attributable to that infrastructure.


Grantee Initials